

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. DACW65-01-B-0008	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 12-Mar-2001	PAGE OF PAGES 1 OF 132
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IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. W26GLG-1033-1013	6. PROJECT NO.
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7. ISSUED BY CONTRACTING DIVISION US ARMY ENGR DIST NORFOLK ATTN: CENAO-CT 803 FRONT STREET NORFOLK VA 23510-1096 TEL: (757) 441-7744 FAX: (757) 441-7183	CODE DACW65	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> <div style="text-align: center; font-weight: bold;">See Item 7</div> TEL: FAX:
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9. FOR INFORMATION CALL:	A. NAME DEBORA S GRAY	B. TELEPHONE NO. <i>(Include area code) (NO COLLECT CALLS)</i> (757) 441-7551
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SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS *(Title, identifying no., date):*

IFB DACW65-01-B-0008, BEACH EROSION CONTROL & HURRICANE PROTECTION, VIRGINIA BEACH, VIRGINIA

The project Base Bid consists of placing approximately 2,000,000 cubic yards of beach fill on the oceanfront resort beach at Virginia Beach, Virginia. The contract will include an Optional Bid Item to provide up to another 1,500,000 cubic yards of beach fill. The location of the work is situated between Rudee Inlet and 89th Street at Fort Story. The beach fill quantity requirements will vary from 30 cubic yards per linear foot to 130 cubic yards per linear foot over the project length of approximately 6.2 miles. The beach fill material shall be dredged from Government furnished borrow sites located in Thimble Shoal Channel and the Atlantic Ocean Channel with a maximum allowable dredging depth of 60 feet MLLW (NOS). The beach berm shall be constructed to a finished height of 10 feet NGVD with a foreshore graded slope of 1 vertical on 20 horizontal. The grading for the finished beach shall be at a tolerance not greater than 0.5 foot above or below the specified height and grade. THIS IS AN UNRESTRICTED PROCUREMENT. NAICS CODE 234990

11. The Contractor shall begin performance within <u>15</u> calendar days and complete it within <u>180</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See _____ .)	
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12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS 10
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13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8 by 02:00:00 (hour) local time 4/11/01 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ☒ is, ☐ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

SOLICITATION, OFFER, AND AWARD (Continued) <i>(Construction, Alteration, or Repair)</i>												
OFFER (Must be fully completed by offeror)												
14. NAME AND ADDRESS OF OFFEROR <i>(Include ZIP Code)</i>					15. TELEPHONE NO. <i>(Include area code)</i>							
CODE FACILITY CODE					16. REMITTANCE ADDRESS <i>(Include only if different than Item 14)</i> See Item 14							
					17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. <i>(Insert any number equal to or greater than the minimum requirements stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)</i>							
AMOUNTS SEE SCHEDULE OF PRICES					18. The offeror agrees to furnish any required performance and payment bonds.							
19. ACKNOWLEDGMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)</i>												
AMENDMENT NO.												
DATE												
20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>					20B. SIGNATURE				20C. OFFER DATE			
AWARD (To be completed by Government)												
21. ITEMS ACCEPTED: <div style="font-size: 24pt; font-weight: bold; margin-top: 10px;">SEE SCHEDULE</div>												
22. AMOUNT		23. ACCOUNTING AND APPROPRIATION DATA										
24. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i>				ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)							
26. ADMINISTERED BY			CODE		27. PAYMENT WILL BE MADE BY						CODE	
CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE												
<input type="checkbox"/> 28. NEGOTIATED AGREEMENT <i>(Contractor is required to sign this document and return _____ copies to issuing office.)</i> Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.					<input type="checkbox"/> 29. AWARD <i>(Contractor is not required to sign this document.)</i> Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.							
30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN <i>(Type or print)</i>					31A. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>							
30B. SIGNATURE			30C. DATE			31B. UNITED STATES OF AMERICA BY			31C. AWARD DATE			

SECTION 00010 Solicitation Contract Form

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	BASE BID FFP - Mobilization and Demobilization PURCHASE REQUEST NUMBER W26GLG-1033-1013	1.00	Lump Sum		

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	FFP - Beachfill, complete, including dredging and transport of borrow material, placement of borrow material, final grading of the beach to lines and grade specified, and all other associated work as indicated and specified.	2,000,000.00	Cubic Yard		

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003		1,500,000.00	Cubic Yard		

OPTIONAL ITEMS

FFP - Beachfill, provided in a quantity from 1 cubic yard up to 1,500,000 cubic yards at the discretion of the Contracting Officer, complete, including dredging and transport of borrow material, placement of borrow material, final grading of the beach to lines and grade specified, and all other associated work as indicated and specified.

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004		4.00	Days		

FFP - All costs associated with the Contractor ceasing all dredging and beach fill operations and placing his plant in a standby status for a period of 24 hours.

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005		91.00	Days		

FFP - All costs associated with the Contractor ceasing all beach fill operations from 11:00 pm to 7:00 am, except dredging operations that do not require use of the pump out facility, and placing his beach fill plant in a standby status for a period of 8 hours.

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006	FFP - TOTAL BASE PLUS OPTION ITEMS				

NET AMT

SECTION 00100 Bidding Schedule/Instructions to Bidders

CLAUSES INCORPORATED BY FULL TEXT

52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@dnb.com.

(End of provision)

52.214-1 SOLICITATION DEFINITIONS--SEALED BIDDING (JUL 1987)

"Government" means United States Government.

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

(End of provision)

52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

52.214-5 SUBMISSION OF BIDS (MAR 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

52.214-12 PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

52.214-19 CONTRACT AWARD--SEALED BIDDING--CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

52.217-5 EVALUATION OF OPTIONS (JUL 1990)

(a) Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

52.232-15 PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

52.232-38 SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration.

- (1) The solicitation number (or other procurement identification number).
- (2) The offeror's name and remittance address, as stated in the offer.
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.
- (5) The offeror's account number and the type of account (checking, savings, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.
- (7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Contracting Officer, U.S. Army Engineer District, Norfolk, 803 Front Street, ATTN: CENAO-SS-C, Norfolk, VA 23510-1096.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: James R. Creighton

Address: 803 Front Street, Norfolk, VA 23510-1096

Telephone: (757)441-7224

E4LC CONSTR 02 AWARD TO RESPONSIBLE OFFEROR

Responsibility will be determined, prior to award, by the Contracting Officer, either by performing a pre-award survey or conclusions based on a previous pre-award survey and/or any performance data available. A pre-award survey will be performed and the offeror will be required to show that he has the necessary capital, experience, and owns or can procure the necessary plant or other resources to commence the work at the time prescribed in the specifications and thereafter to prosecute and complete the work safely and satisfactorily within the time specified.

E4LC CONSTR 03 AMOUNT OF BID OR OFFER GUARANTEE

Bid or offer guarantee in a penal sum of 20 percent of the bid price or \$3,000,000, whichever is the lesser, will be required if the bid or offer price is in excess of \$25,000. If the guarantee is submitted in the form of a bid bond, Standard Form 24 will be used and the bond penalty may be expressed in terms of a percentage of the bid or offer price or may be expressed in dollars and cents.

E4LC CONSTR 04 EVIDENCE OF AUTHORITY TO SIGN OFFERS

Evidence of the authority of individuals signing offers to submit firm offers on behalf of the offeror is required except where the offer is signed, and shows that it is so signed, by: the President, Vice-President, or Secretary of an incorporated offeror; a partner in the case of a partnership; or the owner in the case of a sole proprietorship. Failure to submit with the offer satisfactory evidence of the authority of all other persons may be cause for rejection of the offer as invalid or nonresponsive.

E4LC CONSTR 05 PREAWARD SAFETY CONFERENCE

a. Where an apparent low bidder, in performance of contracts during the previous three-year period, incurred one or more accidents, or where, in the opinion of the Contracting Officer, there is any question regarding this compliance with any safety or accident prevention requirement, such bidder, on request of the Contracting Officer prior to any award under this solicitation, shall attend a conference with representatives of the Contracting Officer to discuss any

such accidents or non-compliance, the reason for their occurrence, and measures which will be taken to preclude any recurrence thereof.

b. Information elicited at this conference will be used by the Contracting Officer, in conjunction with other information obtained in a preaward survey, in determining the bidder's responsibility.

c. The items discussed, the preventive measures considered, and any conclusions reached in this conference shall be recorded in minutes of the meeting, which shall be authenticated by the signatures of representatives of the bidder and the Contracting Officer, and any procedures noted therein as agreed upon shall become an obligation of the bidder, along with all other safety and accident prevention requirements of the contract, if award is made to him.

E4LC CONSTR 06 INSPECTION OF THE SITE

Prospective bidders are invited to visit the site of the work in order to acquaint themselves as to site conditions and other problems incident to the prosecution of the work. Arrangements for inspection of the site shall be made through the Office the the Area Engineer identified in the clause 52.236.27, entitled "SITE VISIT (CONSTRUCTION)."

E4LC CONSTR 07 SUBCONTRACTING PLAN

If the offeror is a large business and the offer amount exceeds \$1,000,000.00, he shall submit a subcontracting plan within three (3) working days of being notified (either verbally or in writing) that he is the apparent low bidder or is otherwise in line for award. The subcontracting plan shall be reviewed and approved by the Contracting Officer prior to award.

E4LC CONSTR 09 BASIS OF AWARD

All blanks must be filled in by the bidder. A single award will be made to the lowest responsible, responsive bidder on the basis of the total price bid. Prior to making an award, a pre-award survey will be made and the low bidder will be required to show that he has the necessary capital, experience, and owns or can procure the necessary plant to commence the work at the time prescribed in the specifications and thereafter to prosecute and complete the work safely and satisfactorily within the time specified.

E4LC CONSTR 10 UNBALANCED OFFERS

Any offer which is materially unbalanced as to prices for the Base Items and the Optional Items may be rejected as non-responsive or otherwise not considered for award.

An unbalanced offer is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

E4LC CONSTR 23 INCURRING COSTS

The Government is not liable for any costs incurred by the offeror submitting an offer in response to this solicitation.

E4LC CONSTR 24 AWARD TO RESPONSIBLE OFFEROR

Responsibility will be determined, prior to award, by the Contracting Officer, either by performing a pre-award survey or conclusions based on a previous pre-award survey and/or any performance data available. A pre-award survey will be performed and the offeror will be required to show that he has the necessary capital, experience, and owns or can procure the necessary plant or other resources to commence the work at the time prescribed in the specifications and thereafter to prosecute and complete the work safely and satisfactorily within the time specified.

52.0000-4009 CONTRACTOR PERFORMANCE AND BANKING INFORMATION

1. Prior to awarding a contract, the Government must conduct a PRE-AWARD SURVEY of the firm selected for award. In order for us to minimize delays in conducting the survey and awarding the contract, you are requested to provide the following information with your offer:

- a. BANK: Branch/Location
 Point-of-Contact
 Telephone Number/Fax Number

Please contact the bank in advance so they will release the necessary information regarding average balances in your operating accounts, lines of credit, and credit history.

- b. 3 CURRENT PROJECTS OF SIMILAR SCOPE AND SIZE:

Project Title/Contract Number
 Customer
 Point-of-Contact
 Telephone Number/Fax Number
 \$ Value
 % Complete
 Scheduled Completion Date

- c. 3 COMPLETED PROJECTS OF SIMILAR SCOPE AND SIZE:

Same as CURRENT PROJECTS; however, in lieu of "% Complete"
 and "Scheduled Completion Date," provide "Completion Date."

- d. DO NOT PROVIDE VOLUMINOUS LISTINGS OF YOUR FIRM'S CONTRACTING HISTORY.

2. If you wish to shield this information from public view at the bid opening, the information may be placed in an envelope with the following legend:

PRE-AWARD SURVEY INFORMATION
 SOLICITATION NO. _____
 <YOUR FIRM'S NAME>

SECTION 00600 Representations & Certifications

CLAUSES INCORPORATED BY FULL TEXT

52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods of factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contradictory to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above _____ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of clause)

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it () is a women-owned business concern.

(End of provision)

52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2000) ALTERNATE I (OCT 2000) & ALTERNATE II (OCT 2000)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is (insert NAICS code).

(2) The small business size standard is 234990.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents as part of its offer that it () is, () is not a small business concern.

(2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it () is, () is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it () is, () is not a women-owned small business concern.

(4) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it () is, () is not a veteran-owned small business concern.

(5) (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.) The offeror represents as part of its offer that it () is, () is not a service-disabled veteran-owned small business concern.

(6) (Complete only if offeror represented itself as small business concern in paragraph (b)(1) of this provision). The offeror represents, as part of its offer, that--

(i) It () is, () is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It () is, () is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. (The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.) Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) (Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.) The offeror shall check the category in which its ownership falls:

() Black American.

() Hispanic American.

() Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

() Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

() Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

(c) Definitions. As used in this provision--

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern," means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern," means a small business concern --

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

52.219-2 EQUAL LOW BIDS. (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus area as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority

consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

(a) ☐ It has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) ☐ It has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

☐ (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

☐ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

52.226-2 HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION

REPRESENTATION (MAY 1997)

(a) Definitions. As used in this provision--

"Historically Black College or University" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority Institution" means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for the purpose of this provision, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

(b) Representation. The offeror represents that it--

() is () is not a Historically Black College or University;

() is () is not a Minority Institution.

(End of provision)

252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that

owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it:

____ (1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

____ (2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

E4LC CONSTR 01 CORPORATE CERTIFICATE

Note: Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the contract and the certificate.

CERTIFICATE

I, _____, certify that I am _____ of the

corporation named as Contractor herein, that _____, was then the

_____ of said corporation; that said contract was duly signed for and in behalf of said

corporation of authority of its governing body, and is within the scope of its corporate powers.

(Name of Corporation)

(Signature)

(Corporate Seal)

E4LC CONSTR 18 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING

(a) The Offeror is requested to enter its CAGE code in the space provided below. The CAGE code entered must be for that name and address.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting Officer to request one in accordance with the provisions of DFARS 52.204-7001 in the section of this solicitation entitled "Instructions to Bidders."

(c) Do not delay submission of the offer pending receipt of a CAGE code.

CAGE Code: ____ _

() UNKNOWN

E4LC CONSTR 26 SMALL BUSINESS STANDARD FOR DREDGING

(a) FAR 52.219-1, SMALL BUSINESS PROGRAM REPRESENTATION, provides the SIC Code and small business size standard for dredging.

(b) Additionally, to be considered small, a firm must perform at least 40% of the yardage with its own dredging equipment or equipment owned by another small dredging firm.

SECTION 00700 Contract Clauses

CLAUSES INCORPORATED BY FULL TEXT

52.202-1 DEFINITIONS (OCT 1995) --ALTERNATE I (APR 1984)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "Commercial component" means any component that is a commercial item.

(c) "Component" means any item supplied to the Federal Government as part of an end item or of another component.

(d) "Nondevelopmental item" means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a

violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (2) Rescind the contract with respect to which--
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) For cost-plus-award-fee contracts--
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may--
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse

impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of

a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as

provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of **Contracting Officer** and shall not be binding until so approved.

(End of clause)

52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause--

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as--

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principles, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

52.211-13 TIME EXTENSIONS (SEP 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

52.214-26 AUDIT AND RECORDS--SEALED BIDDING. (OCT 1997)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because

(1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:

(1) the actual subcontract; or

(2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made:

(1) the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) Except as prohibited by subdivision (d)(2)(ii) of this clause:

(i) an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if:

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if:

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

52.214-28 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall:

(1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.403-4(a)(1); and

(2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.406-2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

52.214-29 ORDER OF PRECEDENCE--SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

52.217-7 OPTION FOR INCREASED QUANTITY--SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within 120 calendar days from receipt of Notice to Proceed. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except--

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged

business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

Definitions. As used in this contract--

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000) ALTERNATE I (OCT 2000)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

- (iv) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
 - (vi) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--
- (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) HUBZone small business concerns;
 - (iv) Small disadvantaged business concerns; and
 - (v) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
- (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) HUBZone small business concerns;
 - (iv) Small disadvantaged business concerns; and
 - (v) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated)

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether HUBZone small business concerns were solicited and, if not, why not;

(D) Whether small disadvantaged business concerns were solicited and, if not, why not;

(E) Whether women-owned small business concerns were solicited and, if not, why not; and

(F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owner small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of

Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a)(1) The worker is paid or is in an approved work training program on a voluntary basis;
 - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION.
(SEP 2000)

- (a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) Payrolls and basic records.
 - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be

paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

52.222-11 SUBCONTRACTS (LABOR STANDARDS (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier

subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
26.6%	6.9%

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is **Virginia Beach, VA.**

52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or

order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in

which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

- (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;
 - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of

the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

- (1) Actively participates in the group;
- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 - (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
 - (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 - (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
 - (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
 - (m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
 - (n) The Contractor shall designate a responsible official to--
 - (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a)) Definitions. As used in this clause--

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) Postings. (1) The Contractor agrees to post employment notices stating--
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.
- (End of clause)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

52.223-6 DRUG-FREE WORKPLACE (JAN 1997)

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who

has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to

suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

52.225-11 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)

(a) Definitions. As used in this clause--

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.

Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that--

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: NONE [Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) \1\
Item 1:			
Foreign construction material....			
Domestic construction material...			
Item 2:			
Foreign construction material....			
Domestic construction material...			

\1\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of clause)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitute a not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the

Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at (FAR) 2.101 to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.-

(c) The amount of the bid guarantee shall be _____ percent of the bid price or \$_____, whichever is less.-

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.-

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of less than \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of less than \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

IRREVOCABLE LETTER OF CREDIT NO. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing

financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]

(Date) _____

Our Letter of Credit Advice Number _____

Beneficiary: _____ [U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency] _____ the sum of United States \$ _____.
This draft is drawn under Irrevocable Letter of Credit No. _____.

[Beneficiary Agency]

By: _____

(End of clause)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

52.229-5 TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 1997)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting

Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

52.232-17 INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in

paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) - ALTERNATE I (APR 1984)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JUN 1997)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

- (a) Invoice payments. (1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:
 - (i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty. (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on

each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports. (1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

52.233-1 DISPUTES. (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least **fifteen (15%)** percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

- (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

52.236-13 ACCIDENT PREVENTION (NOV 1991)

- (a) The Contractor shall provide and maintain work environments and procedures which will
- (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) avoid interruptions of Government operations and delays in project completion dates; and
 - (3) control costs in the performance of this contract.
- (b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-
- (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.
- (c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- (d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any

supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of

the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term

or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

52.243-4 CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

- (1) the date, circumstances, and source of the order and
- (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

(a) Definitions.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes

reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

52.247-34 F.O.B. DESTINATION (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

- (1)(i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for

(i) the affected portions of the existing contract requirement and

(ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

(i) 45 percent for fixed-price contracts or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering-- Construction clause of contract , shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996) - ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work

terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due

to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(i) acts of God or of the public enemy,

(ii) acts of the Government in either its sovereign or contractual capacity,

(iii) acts of another Contractor in the performance of a contract with the Government,

(iv) fires,

(v) floods,

(vi) epidemics,

(vii) quarantine restrictions,

(viii) strikes,

(ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the

time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any _____ (48 CFR _____) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) “Date of conviction” means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(MAR 2000)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr2000.com>.

(End of clause)

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

252.209-7003 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (MAR 1998)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 37 U.S.C. 4212(d) (i.e., the VETS-100 report required by Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has submitted the most recent report required by 38 U.S.C. 4212(d).

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR. 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities*, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business*, when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (AUG 2000)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico --

(1) Food;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;

(8) Canvas products;

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(10) Any item of individual equipment (Federal supply Classification 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply --

(1) To supplies listed in FAR section 25.104(a), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico;

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(4) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--

(i) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--

(a) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions. As used in this clause--

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concerns, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

- (a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.
- (b) The price breakdown --
 - (1) Must include sufficient detail to permit an analysis of profit, and of all costs for --
 - (i) Material;
 - (ii) Labor;
 - (iii) Equipment;
 - (iv) Subcontracts; and
 - (v) Overhead; and
 - (2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.
- (c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (d) The Contractor's proposal shall include a justification for any time extension proposed.

252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000)

- (a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.
- (b) The Contractor shall--
 - (1) Check all drawings furnished immediately upon receipt;
 - (2) Compare all drawings and verify the figures before laying out the work;
 - (3) Promptly notify the Contracting Officer of any discrepancies;
 - (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
 - (5) Reproduce and print contract drawings and specifications as needed.
- (c) In general--
 - (1) Large-scale drawings shall govern small-scale drawings; and
 - (2) The Contractor shall follow figures marked on drawings in preference to scale measurements.
- (d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
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(End of clause)

252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS. (DEC 1991)

(a) The Contractor shall --

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may --

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et. seq.).

252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION. (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) **Sixty (60%)** percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining **forty (40%)** percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of --

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to

appeal.

252.236-7006 COST LIMITATION (JAN 1997)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which--

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to---

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD) (MAR 2000)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244-6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) Definitions. As used in this clause --

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

(1) Type, weight, and cube of cargo;

- (2) Required shipping date;
 - (3) Special handling and discharge requirements;
 - (4) Loading and discharge points;
 - (5) Name of shipper and consignee;
 - (6) Prime contract number; and
 - (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.
- (e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information --
- (1) Prime contract number;
 - (2) Name of vessel;
 - (3) Vessel flag of registry;
 - (4) Date of loading;
 - (5) Port of loading;
 - (6) Port of final discharge;
 - (7) Description of commodity;
 - (8) Gross weight in pounds and cubic feet if available;
 - (9) Total ocean freight in U.S. dollars; and
 - (10) Name of the steamship company.
- (f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief --
- (1) No ocean transportation was used in the performance of this contract;
 - (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
 - (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
 - (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM
DESCRIPTION

CONTRACT
LINE ITEMS

QUANTITY

TOTAL_____

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontractors under this contract that--

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

252.248-7000 PREPARATION OF VALUE ENGINEERING CHANGE PROPOSALS (MAY 1994)

Prepare value engineering change proposals, for submission pursuant to the value engineering clause of this contract, in the format prescribed by the version of MIL-STD-973 in effect on the date of contract award.

(End of clause)

E4LC CONSTR 27 REQUIREMENT FOR "PAYMENT AND PERFORMANCE BONDS" OR
"PAYMENT BONDS ONLY"

If the resulting contract is awarded for an amount in excess of \$100,000, the contractor shall be required to provide both payment and performance bonds in accordance with FAR 52.228-15, "Performance and Payment Bonds--Construction." FAR 52.228-15 applies only to those contracts awarded for an amount in excess of \$100,000.

If the resulting contract is awarded for an amount in excess of \$25,000 but no more than \$100,000, the contractor shall not be required to provide a performance bond. The required payment bond shall be provided in accordance with FAR 52.228-13, "Alternative Payment Protections." FAR 52.228-13 applies only to those contracts awarded for an amount in excess of \$25,000 by no more than \$100,000.

Neither payment nor performance bonds are required for contracts awarded for an amount less than \$25,000.

SECTION 00800 Special Contract Requirements

CLAUSES INCORPORATED BY FULL TEXT

52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within 15 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 180 calendar days from receipt of Notice to Proceed. The time stated for completion shall include final cleanup of the premises.

Should the total quantity of material to be paid for and actually removed under this contract exceed the quantity from the Bidding Schedule, additional time will be allowed at the rate of one day for each 10,000 cubic yards in excess of the estimated quantity.

(End of clause)

52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$600.00 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

E4LC CONSTR 02 AWARD TO RESPONSIBLE OFFEROR

Responsibility will be determined, prior to award, by the Contracting Officer, either by performing a pre-award survey or conclusions based on a previous pre-award survey and/or any performance data available. A pre-award survey will be performed and the offeror will be required to show that he has the necessary capital, experience, and owns or can procure the necessary plant or other resources to commence the work at the time prescribed in the specifications and thereafter to prosecute and complete the work safely and satisfactorily within the time specified.

E4LC CONSTR 03 AMOUNT OF BID OR OFFER GUARANTEE

Bid or offer guarantee in a penal sum of 20 percent of the bid price or \$3,000,000, whichever is the lesser, will be required if the bid or offer price is in excess of \$25,000. If the guarantee is submitted in the form of a bid bond, Standard Form 24 will be used and the bond penalty may be expressed in terms of a percentage of the bid or offer price or may be expressed in dollars and cents.

E4LC CONSTR 04 EVIDENCE OF AUTHORITY TO SIGN OFFERS

Evidence of the authority of individuals signing offers to submit firm offers on behalf of the offeror is required except where the offer is signed, and shows that it is so signed, by: the President, Vice-President, or Secretary of an incorporated offeror; a partner in the case of a partnership; or the owner in the case of a sole proprietorship. Failure to submit with the offer satisfactory evidence of the authority of all other persons may be cause for

rejection of the offer as invalid or nonresponsive.

E4LC CONSTR 05 PREAWARD SAFETY CONFERENCE

a. Where an apparent low bidder, in performance of contracts during the previous three-year period, incurred one or more accidents, or where, in the opinion of the Contracting Officer, there is any question regarding this compliance with any safety or accident prevention requirement, such bidder, on request of the Contracting Officer prior to any award under this solicitation, shall attend a conference with representatives of the Contracting Officer to discuss any such accidents or non-compliance, the reason for their occurrence, and measures which will be taken to preclude any recurrence thereof.

b. Information elicited at this conference will be used by the Contracting Officer, in conjunction with other information obtained in a preaward survey, in determining the bidder's responsibility.

c. The items discussed, the preventive measures considered, and any conclusions reached in this conference shall be recorded in minutes of the meeting, which shall be authenticated by the signatures of representatives of the bidder and the Contracting Officer, and any procedures noted therein as agreed upon shall become an obligation of the bidder, along with all other safety and accident prevention requirements of the contract, if award is made to him.

E4LC CONSTR 06 INSPECTION OF THE SITE

Prospective bidders are invited to visit the site of the work in order to acquaint themselves as to site conditions and other problems incident to the prosecution of the work. Arrangements for inspection of the site shall be made through the Office of the Area Engineer identified in the clause 52.236.27, entitled "SITE VISIT (CONSTRUCTION)."

E4LC CONSTR 07 SUBCONTRACTING PLAN

If the offeror is a large business and the offer amount exceeds \$1,000,000.00, he shall submit a subcontracting plan within three (3) working days of being notified (either verbally or in writing) that he is the apparent low bidder or is otherwise in line for award. The subcontracting plan shall be reviewed and approved by the Contracting Officer prior to award.

E4LC CONSTR 08 MAGNITUDE OF CONSTRUCTION PROJECT

The estimated contract price of the work for this project is over \$10,000,000.00.

E4LC CONSTR 09 BASIS OF AWARD

All blanks must be filled in by the bidder. A single award will be made to the lowest responsible, responsive bidder on the basis of the total price bid. Prior to making an award, a pre-award survey will be made and the low bidder will be required to show that he has the necessary capital, experience, and owns or can procure the necessary plant to commence the work at the time prescribed in the specifications and thereafter to prosecute and complete the work safely and satisfactorily within the time specified.

E4LC CONSTR 10 UNBALANCED OFFERS

Any offer which is materially unbalanced as to prices for the Base Items and the Optional Items may be rejected as non-responsive or otherwise not considered for award.

An unbalanced offer is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

E4LC CONSTR 11 DEPARTMENT OF LABOR WAGE DECISION (CONSTRUCTION)

Any contract awarded as a result of this solicitation will be subject to the U.S. Department of Labor Wage Decision(s)

General Decision Number VA010017

General Decision Number VA010017

Superseded General Decision No. VA000017

State: **Virginia**

Construction Type:
HEAVY

County(ies):

CHESAPEAKE*

SUFFOLK*

VIRGINIA BEACH*

*INDEPENDENT CITIES OF CHESAPEAKE, SUFFOLK AND [h2h4](#)**VIRGINIA BEACH**

HEAVY CONSTRUCTION PROJECTS (Excluding Sewer and Water Lines)

Modification Number

0

Publication Date

03/02/2001

COUNTY(ies):

CHESAPEAKE*

SUFFOLK*

VIRGINIA BEACH*

ELEC0080D 03/01/2000

	Rates	Fringes
ELECTRICIANS	18.60	2.30+11.25%
	+a	

a. Workmen shall take off 2 hours with pay, at the discretion of the employer, on State and National Election days; Tuesday following the first Monday in November, provided they are qualified and vote.

ENGI0147C 05/01/2000

	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
Crane operators, 90 tons and over	19.78	5.18

Crane operators, under 90 tons	18.78	5.18
Mechanics	18.78	5.18
Backhoes	15.02	5.18
Oilers	11.64	5.18

IRON0079E 05/01/2000		
	Rates	Fringes
IRONWORKERS:		
Structural & Reinforcing	18.00	4.84+12%

PLAS0229B 05/01/1999		
	Rates	Fringes
CEMENT MASONS	15.60	2.55

SUVA2022A 12/01/1990		
	Rates	Fringes
CARPENTERS	9.50	
LABORERS:		
Unskilled	5.15	
Landscape	5.03	.78
Pipelayers	6.50	
PILEDRIVERS	9.56	1.13
TRUCK DRIVERS	8.41	.40

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within

the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests

for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment

data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

General Decision Number VA000026

General Decision Number VA000026

Superseded General Decision No. VA990026

TUGS TENDING CLAMSHELL		
DREDGES:		
Tug Master	15.29	3.41+a
Tug Mate	13.44	3.41+a
Engineer	14.68	3.41+a
Assistant Engineer	13.27	3.41+a
Deckhand	10.12	3.31+a
Cook	10.40	3.31+a

STEWARD DEPARTMENT ON

CLAMSHELL DREDGES:

Cook	10.01	3.31+a
Mess Cook	9.42	3.31+a
Messman & Janitor	9.28	3.31+a

FOOTNOTE:

- a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Good Friday, Labor Day, Thanksgiving Day, Christmas Day. Plus Vacation contribution of 7% of straight time pay for all hours worked.

SUVA2041A 11/01/1994

	Rates	Fringes
HYDRAULIC DREDGES UNDER 20":		
Leverman	14.53	2.96+a
Engineer	14.18	2.96+a
Derrick Operator	13.20	2.96+a
Electrician	13.45	2.96+a
Carpenter	13.14	2.96+a
Mate	12.39	2.96+a
Welder	12.78	2.96+a
Spill Barge Operator	12.97	2.96+a
Spider Barge Operator	12.97	2.96+a
Tug Master	12.29	2.96+a
Tug Mate	11.76	2.96+a
Steward	10.42	2.96+a
Oiler	10.12	2.96+a
Deckhand	9.50	2.96+a
Tug Deckhand	9.50	2.96+a
Shoreman	9.32	2.96+a
Second Cook	9.50	2.96+a
Messman	9.32	2.96+a
Rodman	9.50	2.96+a
Handyman	9.50	2.96+a
Night Cook	9.50	2.96+a
Janitor/Porter	9.50	2.96+a

DIPPER DREDGES:

Operator	14.59	2.96+a
Engineer	14.04	2.96+a
Welder	12.78	2.96+a
Mate	12.39	2.96+a
Oiler	10.12	2.96+a
Deckhand	9.50	2.96+a
Launchman	10.12	2.96+a
Scowman	9.63	2.96+a
Rodman	9.50	2.96+a
Handyman	9.50	2.96+a

TUGS:

(Tending Dipper Dredges)

Tug Master	13.16	2.96+a
Engineer	12.96	2.96+a
Tug Mate	11.87	2.96+a
Assistant Engineer	11.75	2.96+a
Deckhand	9.37	2.96+a
Cook	9.63	2.96+a

STEWARD DEPARTMENT:

(On Dipper Dredges)

Cook	9.27	2.96+a
Mess Cook	8.74	2.96+a
Messman and Janitor	8.61	2.96+a

DRILL BOATS:

Engineer	14.18	2.96+a
Blaster	13.69	2.96+a
Driller	13.69	2.96+a

FOOTNOTES APPLICABLE TO ALL ABOVE CRAFTS:

a. PAID HOLIDAYS AND VACATION:

New Year's Day, Memorial Day, Independence Day,
Good Friday, Labor Day, Thanksgiving Day, and Christmas
Day; plus vacation contribution of 7% of straight time
pay for all hours worked.

Unlisted classifications needed for work not included within the
scope of the classifications listed may be added after award only
as provided in the labor standards contract clauses (29 CFR 5.5(a

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can
be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a
position on a wage determination matter
- * a conformance (additional classification and rate)
ruling

On survey related matters, initial contact, including requests
for summaries of surveys, should be with the Wage and Hour
Regional Office for the area in which the survey was conducted
because those Regional Offices have responsibility for the
Davis-Bacon survey program. If the response from this initial
contact is not satisfactory, then the process described in 2.)
and 3.) should be followed.

With regard to any other matter not yet ripe for the formal
process described here, initial contact should be with the Branch
of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division
 U. S. Department of Labor
 200 Constitution Avenue, N. W.
 Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
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 Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
 U. S. Department of Labor
 200 Constitution Avenue, N. W.
 Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.
 END OF GENERAL DECISION

General Decision Number VA000070

General Decision Number VA000070

Superseded General Decision No. VA990070

State: **Virginia**

Construction Type:

DREDGING

County(ies):

ACCOMACK	MATHEWS	POQUOSON*
GLOUCESTER	MIDDLESEX	PORTSMOUTH*
ISLE OF WIGHT	NORTHAMPTON	VIRGINIA BEACH*
LANCASTER	NORTHUMBERLAND	YORK

*INDEPENDENT CITIES

HOPPER **DREDGING** CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/11/2000

COUNTY(ies):

ACCOMACK	MATHEWS	POQUOSON*
GLOUCESTER	MIDDLESEX	PORTSMOUTH*
ISLE OF WIGHT	NORTHAMPTON	VIRGINIA BEACH*
LANCASTER	NORTHUMBERLAND	YORK

SUVA2025A 03/01/1991

Rates

Fringes

SELF-PROPELLED HOPPER DREDGES:

Drag Tenders	8.21
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a

WAGE DETERMINATION APPEALS PROCESS

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2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
 200 Constitution Avenue, N. W.
 Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
 U. S. Department of Labor
 200 Constitution Avenue, N. W.
 Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.
 END OF GENERAL DECISION

E4LC CONSTR 12 REQUIRED INSURANCE

The contractor shall procure and maintain during the entire period of performance under this contract, the following minimum insurance:

TYPE	AMOUNT
Workers Compensation	As required by State law
Employer's Liability	\$100,000 per person
General Liability	\$500,000 per occurrence
Motor Vehicle Liability (for each motor vehicle):	
Bodily injury or death	\$200,000 per person \$500,000 per occurrence
Property damage	\$20,000 per occurrence

Prior to commencement of work hereunder, the contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than 30 days after written notice thereof to the Contracting Officer.

E4LC CONSTR 13 PERFORMANCE OF WORK BY CONTRACTOR

Offeror's attention is directed to FAR 52.236-1, "Performance of Work by

Contractor." Contractor is required to furnish a description of the work which will be performed by his own organization, (e.g., earthwork, paving, etc.), the percentage of the total work this represents, and the estimated cost thereof. Such description of work to be performed by the contractor's own organization shall be provided to the Contracting Officer within 10 days of contract award.

E4LC CONSTR 14 PERFORMANCE EVALUATION OF CONTRACTOR

As a minimum, the Contractor's performance will be evaluated upon final acceptance of the work. However, interim evaluations may be prepared at any time during contract performance when determined to be in the best interest of the Government.

The format for the evaluation will be DD Form 2626, and the Contractor will be rated either "Outstanding," "Satisfactory," or "Unsatisfactory" in the areas of Contractor Quality Control, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, and Compliance with Safety Standards. The Contractor will be advised on any unsatisfactory rating, either in an individual element or in the overall rating, prior to completing the evaluation; all contractor comments will be made a part of the official record. In compliance with DOD FAR Supplement 236.201, Performance Evaluation Reports will be available to all DOD Contracting Offices for their future use in determining contractor responsibility.

E4LC CONSTR 16 ACCIDENT PREVENTION PLAN

In accordance with the clause entitled "Accident Prevention," the contractor will not be allowed to commence work on the job site until an acceptable accident prevention plan has been submitted. The contractor will receive official notification of the acceptance of his accident prevention plan.

E4LC CONSTR 17 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING

(a) The Offeror is requested to enter its CAGE code in the space provided below. The CAGE code entered must be for that name and address.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting Officer to request one in accordance with the provisions of DFARS 52.204-7001 in the section of this solicitation entitled "Instructions to Bidders."

(c) Do not delay submission of the offer pending receipt of a CAGE code.

CAGE Code: _ _ _ _ _

() UNKNOWN

E4LC CONSTR 18 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING

(a) The Offeror is requested to enter its CAGE code in the space provided below. The CAGE code entered must be for that name and address.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting

Officer to request one in accordance with the provisions of DFARS 52.204-7001 in the section of this solicitation entitled "Instructions to Bidders."

(c) Do not delay submission of the offer pending receipt of a CAGE code.

CAGE Code: ____ _

() UNKNOWN

E4LC CONSTR 19 YEAR 2000 COMPLIANCE (CONSTRUCTION)

In accordance with FAR 39.106, the contractor shall ensure that with respect to any design, construction, goods, or services under this contract, as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 (Y2K) compliant. Specifically, the contractor shall:

- a. Perform, maintain, and provide an inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order which may be affected by the Y2K compliance requirement.
- b. Indicate whether each component is currently Y2K compliant or requires an upgrade for compliance prior to government acceptance.

E4LC CONSTR 20 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS

(a) The Government--

- (1) Will provide the Contractor, without charge, one set of large-scale reproducible contract drawings and specifications except publications incorporated into the technical provisions by reference; and
- (2) Additional sets are available on request from the Defense Printing Service, Norfolk, Virginia, (757)444-5968, at the solicitation document price. Document sets will be available from Defense Printing Service until 30 days after contract award.

(b) The Contractor shall--

- (1) Check all drawings furnished immediately upon receipt;
- (2) Compare all drawings and verify the figures before laying out the work;
- (3) Promptly notify the Contracting Officer of any discrepancies; and
- (4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

SEE INDEX OF DRAWINGS IN DIVISION 1 (SECTION 01850) OF THE SPECIFICATION.

E4LC CONSTR 22 PARTNERING

In order to most effectively accomplish this contract, the Government is willing to form a cohesive partnership with the Contractor and its subcontractors. This partnership would strive to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule. This partnership would be bilateral in make-up and participation will be totally voluntary. Any cost associated with effecting this partnership will be agreed to by both parties and will be shared equally with no change in contract price.

E4LC CONSTR 23 INCURRING COSTS

The Government is not liable for any costs incurred by the offeror submitting an offer in response to this solicitation.

TECHNICAL SPECIFICATIONS
FOR
BEACH EROSION CONTROL
AND
HURRICANE PROTECTION
VIRGINIA BEACH, VIRGINIA

PREPARED AND
ISSUED BY
DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
TECHNICAL SUPPORT DIVISION
WATERFIELD BUILDING
803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096

TECHNICAL SPECIFICATIONS
BEACH EROSION CONTROL
AND
HURRICANE PROTECTION
VIRGINIA BEACH, VIRGINIA

TABLE OF CONTENTS

SECTION TITLE

DIVISION 1 - GENERAL REQUIREMENTS

01005	Special Work Requirements and Restrictions
01200	Project Meetings
01270	Measurement and Payment
01330	Submittal Procedures
F4025	Transmittal Form 4025 (Sample Only)
F4288	Submittal Register Form 4288-R (Sample Only)
01355	Environmental Protection
01451	Contractor Quality Control
01500	Temporary Construction Facilities
	Project Sign, Safety Sign, and Sign Erection
01850	Drawing Index

DIVISION 2 - SITE WORK

02881	Dredging
02882	Beach Fill

DIVISIONS 3 THROUGH 16

These Divisions not used

SECTION 01005

SPECIAL WORK REQUIREMENTS AND RESTRICTIONS

2/01

PART 1 GENERAL

1.1 SPECIAL WORK REQUIREMENTS

The work consists of dredging beach fill material from Government furnished borrow sites located in Thimble Shoal Channel to maximum allowable depths of 54 feet MLLW (NOS) and 58 feet MLLW (NOS) in the borrow area as indicated and the Atlantic Ocean Channel to a maximum allowable dredging depth of 60 feet MLLW (NOS). The Contractor shall perform the scheduled work with one or more hopper dredge and transport the material to a pump out buoy or series of pump out buoys to be provided by the Contractor. The material shall then be carried from the pump out buoy or buoys to the beach by hydraulic pipeline and deposited within the designated beach placement area segments as indicated and specified.

1.1.1 Order of Work

The Contractor shall perform all required beach fill placement operations commencing at 12th Street and proceeding continuously to final beach fill completion at 89th Street.

1.1.2 Access to Work Site

The Virginia Beach oceanfront is served by an all weather surfaced road network. The Contractor's equipment and vehicular access into the work area between Atlantic Avenue and the beachfront will be available through the concrete ramp public right-of-ways at 2nd Street, 14th Street, 20th Street, 37th Street, and 57th Street and the unimproved public right-of-ways at 68th Street and 79th Street. The Contractor shall prepare, as a part of his Work Plan and Progress Schedule, his proposed methods for gaining access to the workplace by these rights-of-way that does not unnecessarily impact convenient and safe access to and from the beach by the public. Access and egress to the work area is the responsibility of the Contractor and is subject to permit approvals required by the City of Virginia Beach. All roads approved for the Contractor's use shall be maintained throughout construction and restored to as good condition as existed prior to their use. The Contractor shall keep all roads free of mud and other

foreign materials resulting from his operations. The Contractor's vehicles shall at no time follow a vehicle closer than 50 feet, and all vehicles shall pull off the road and come to a complete stop when meeting emergency vehicles and vehicles with flashing lights. All temporary construction shall be removed and the affected area restored to its original condition. All costs for the use of existing transportation facilities, for the construction of temporary facilities, and for maintenance, repair, removal and restoration shall be borne by the Contractor.

1.1.3 Required Stand By Periods of No Work by the Contractor

During the contract period, the Contractor will be required to stop all work and secure his plant for designated times due to holidays and events at the resort beach. During these periods, the Contractor will be required to stop all dredging and beach fill placement operations and secure all of his on beach plant and equipment off the beach in the Contractor's approved Staging Area for the dates and times as specified below:

Memorial Day Weekend - May 25th @ 7:00am until May 29th @ 7:00am
July 4th Celebration - July 3rd @ 7:00am until July 6th @7:00am
Labor Day Weekend - August 31st @7:00am until September 4th
@7:00am

Under no circumstances shall the Contractor perform dredging or beach fill placement operations or move his on beach plant during these periods.

1.1.4 Contracting Officer Directed 24-Hour Stand By Time

During the contract period, the Government reserves the right to issue stand by orders to the Contractor for periods up to 24 hours at a cost and in a number as bid by the Contractor on the Optional Bid Schedule Item for this requirement. If the Contracting Officer directs that plant be placed in a standby status, the Contractor shall cease all beach fill operations and secure his on beach plant and equipment off the beach in the Contractor's approved Staging Area. During this period the Contractor will be allowed to perform dredging, but will not be allowed to operate any plant on the beach including operations that utilize the pump out mooring facility. The Contracting Officer will give the Contractor a minimum 72 hour notice before plant is to be placed on standby status. When in standby status, plant will not be moved from the designated location unless approved by the Contracting Officer.

1.1.5 Contracting Officer Directed 8-Hour Stand By Time

During the contract period, the Government reserves the right to issue stand by orders to the Contractor for periods of 8-hours, from 11:00pm to 7:00am, at a cost as bid by the Contractor in the Optional Bidding Schedule. If the Contracting Officer directs that plant be placed in a standby status in accordance with this requirement, the Contractor shall cease all beach fill operations and secure his on beach plant within an area as designated by the Contracting Officer. During this period the Contractor will be allowed to perform dredging, but will not be allowed to operate any plant on the beach including operations that utilize the pump out mooring facility. The Contracting Officer will give the Contractor a minimum 72 hour notice before plant is to be placed on standby status. When in standby status, plant will not be moved from the designated location unless approved by the Contracting Officer.

1.2 SECURITY AND PUBLIC SAFETY OF WORK AREAS

The dredging and beach fill placement area is accessible to the general public; however, the Government will not undertake to exclude the public or restrict public access to the site during the work. The Contractor shall fully comply with the provisions of OSHA safe working practices and the Safety and Accident Prevention requirements of these specifications. The Contractor shall employ the use of signs, barricades, barriers, flagmen, and any other devices and measures required to assure public and worker safety at the dredging and beach fill placement areas at all times. Unless directed otherwise, the Contractor may perform the scheduled work 24 hours a day, 7 days a week; however, the Contractor will not be allowed to operate plant or equipment within 150 feet of the boardwalk from 11:00pm to 7:00am. All lighting associated with the project shall be limited to the immediate area of active construction only. Such lighting shall be shielded, low-pressure sodium vapor lights directed to the maximum extent practical towards the ocean to minimize illumination of the beach and boardwalk area. Red filters shall be placed over vehicle headlights of the Contractor's plant and equipment used on the beach. Lighting on offshore equipment shall be similarly minimized through reduction, shielding, lowering, and appropriate placement of lights to avoid excessive illumination of the water.

1.3 NOISE CONTROL AND ABATEMENT

The Contractor shall employ the use of properly installed and maintained mufflers, silencers, and manufacturer's recommended sound suppressors on all plant, machinery, and equipment used on this work. The use of sound signals such as whistles, horns, or bells shall not be used if two-way radio communication can accomplish the required function. The Contractor shall not use sound signals, with the exception of those signals required for vessel operations by the U.S. Coast Guard, during the time between sunset and sunrise. During the time between 11:00pm and 7:00am, the Contractor shall plan and schedule his work operations to minimize noise of alarms from the backward operations of plant and equipment. Accordingly, the Contractor shall operate plant in a forward mode and limit beach fill operations in the vicinity of the boardwalk to the maximum extent practical during this time.

1.4 COOPERATION WITH OTHER CONTRACTORS

During the period of this contract, other contracts may be in force for the construction of other features of work on or adjacent to the site of work being accomplished under this contract. The Contractor shall arrange his plant, and shall schedule and perform this work, so as to effectively cooperate with all other contractors and Government agencies.

1.5 COORDINATION BETWEEN CONTRACTORS

It shall be the responsibility of the Contractor on this contract to be fully informed of the extent of the limits of work to be performed by other contractors. Should there be any conflict between these limits, the Contractor shall immediately notify the Contracting Officer of the conflict, and the Contracting Officer's decision shall be final.

1.6 NOTIFICATION OF BEACH FILL OPERATIONS

The Contractor shall maintain a current register of planned beach fill operations indicating where the beach fill operations will be on a given day, including street locations for the beach fill operations and the pump out facility, and their daily projected locations along the beach fill placement area for the duration of the contract. The register shall be updated daily and provided with the Daily Report of Operations in a format approved by the Contracting Officer for ready release to the public.

1.7 PHYSICAL DATA

1.7.1 Physical Conditions Information

The physical conditions indicated on the drawings and described in the specifications are the result of site investigations and surveys. Information and data furnished or referred to below is furnished for the Contractor's information; however, it is expressly understood that the Government will not be responsible for any interpretation or conclusion drawn from this information or data by the Contractor.

1.7.2 Weather Conditions Information

Complete weather forecasts, records and reports may be obtained from the National Weather Service in Wakefield, Virginia, telephone (757) 899-4200, Menu selection service or operator assisted as applicable. The Contractor shall satisfy himself as to the hazards likely to arise from the weather conditions during the dredging period.

1.7.3 Weather/Physical Conditions

The location of the work is situated along the oceanfront resort beach in Virginia Beach, Virginia. The area is at times exposed to high winds and severe ocean waves. The offshore mean tide range is approximately 3.4 feet based on NOS observations at the Virginia Beach Fishing Center.

1.7.4 Condition of Channel Borrow Areas

The plans for dredging show the condition of the Thimble Shoal Channel and the Atlantic Ocean Channel at the time of the most recent survey; however, the condition of the channel borrow areas will be verified by a survey made before dredging. The channel borrow areas may contain trash, debris, and small obstructions not shown on the plans for dredging.

1.7.5 Obstruction of Channel Borrow Areas

The Government will not undertake to keep the area of channel borrow areas free from vessels or other obstructions, except to the extent of such regulations, if any, as may be prescribed by the Secretary of the Army, in accordance with the provisions of Section 7 of the River and Harbor Act,

approved 3 August 1917. The Contractor will be required to conduct the work in such manner as to obstruct navigation as little as possible, and in case the Contractors' plant so obstructs the channel as to make difficult or endanger the passage of vessels, said plant shall be promptly moved on the approach of any vessel to such an extent as may be necessary to afford a practicable passage. Upon the completion of the work, the Contractor shall promptly remove his plant, including ranges, buoys, piles, and other marks placed by him under this contract in navigable water or on shore.

1.7.6 Channel Borrow Areas Traffic

Traffic in Thimble Shoal Channel and Atlantic Ocean Channel consists of a wide variety of types and sizes of vessels, including large deep-draft commercial bulk carriers, tankers, container vessels, and Naval vessels. Traffic will also include various light-to-medium draft bay and sea-going vessels, tugs, barges, scows and pleasure craft of all sizes.

1.7.7 Oyster Grounds

There are no known oyster grounds in the vicinity of the channel borrow areas.

1.7.8 Condition of Beach Fill Areas

The required beach fill areas and quantity estimates specified are based on the condition of the beach at the time of the most recent surveys as indicated. The conditions shown by the surveys and the required beach fill quantities specified are subject to change due to the constantly changing shoreline and the natural forces of wind and waves acting on the beach. The actual quantities to be placed and paid for in each respective beach fill segment will be determined by the Contracting Officer from the surveys and volume computations to be performed by the independent surveyor or engineer as specified immediately before the Contractor commences fill operations in a respective beach fill section. The Contracting Officer may make alterations in the plan dimensions, grade of slopes, or volume of fill per cubic foot in a respective beach fill segment in order to increase or decrease the volume of fill placed along the beach. The Contractor shall work closely with the Contracting Officer to ensure that the total quantity of sand allowed under this contract is uniformly distributed along the entire length of the beach fill area in a manner to

construct a finished beach berm of constant dimensions along the entire project length.

1.7.9 Responsibility

The Contractor shall hold and save harmless the United States, its officers, and employees from all claims that may arise as a result of the Contractor's negligence in connection with the work performed under the contract, from noncompliance by the Contractor with the provisions of the contract drawings and specifications, or from the instruction of the Contracting Officer.

1.8 LAYOUT OF WORK AND SURVEYS

1.8.1 General

The Contractor shall be responsible for the layout of all work, surveys, and beach fill volume computations; however, the Contractor must retain the services of an independent Professional Engineer or Surveyor currently licensed in the Commonwealth of Virginia to perform and certify this work. This independent Professional Engineer or Surveyor cannot be in the regular employ of the Contractor and must be approved by the Contracting Officer. The markings to layout the work shall be placed in the immediate work areas only and shall not be removed until a respective work area has been completed and accepted for payment purposes by the Contracting Officer. As applicable, the Government will furnish within 14 calendar days of receipt of a written request by the Contractor, the coordinates and monument descriptions for the existing horizontal control within vicinity of the work areas. All requests shall be addressed to the U.S. Army Corps of Engineers, Norfolk District, Operations Branch, Survey Section, CENAO-EN-TS-ON, 803 Front Street, Norfolk, Virginia 23510-1096. Point of contact concerning this request is Chief, Navigation Support and Survey Section, phone (757) 441-7125, or FAX (757) 441-7664. The Contractor shall be responsible for using this information to dredge within the channel borrow areas as shown, and to deposit the dredged beach fill material at the locations indicated. The Contractor shall be responsible for all costs to layout the work, to establish and maintain markings of the channel borrow areas and placement areas, all surveys and volume computations required of the Contractor, and the removal of all markings placed in a respective work area upon completion of the work as specified.

The contract completion time will not be extended due to failure of the Contractor to adequately establish and maintain his markings of the work areas.

1.8.1.1 Electronic Survey and Positioning Systems

When the Contractor utilizes electronic survey and positioning systems to perform dredging operations, all work accomplished with the use of the systems shall be reviewed and certified as accurate by the Contractor's Quality Control Manager. This signed certification shall be submitted as a part of the Daily Report of Operations in accordance with the requirements of SECTION 01451 to assure that all work performed with the use of the equipment and systems meets contract requirements.

1.8.2 Datum and Bench Marks

The plane of reference for the beach fill placement work is NGVD, National Geodetic Vertical Datum as indicated. The plane of reference for dredging in the channel borrow areas is MLLW (NOS) as established by the National Ocean Service. The bench mark elevations are shown on the drawings for the respective work areas. The government will furnish monument descriptions for these bench marks at the Preconstruction Conference.

1.8.3 Use of Coast Guard Navigation Aid Structures

The Commander, Fifth Coast Guard District, has authorized the Norfolk District, Corps of Engineers, and its Contractors to use fixed Federal aids to navigation structures, established and maintained by the U.S. Coast Guard, for support of temporary dredging tide gauges when performing Federal dredging operations. If a Contractor chooses to use navigation aid structures for this purpose, he shall abide by the following requirements:

a. The Contractor shall advise the Commander, Fifth Coast Guard District, Aids to Navigation and Waterways Branch, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, in writing, of his intention to attach tide gauges to navigation aid and structures, prior to commencing a dredging project. This notice shall include the name of each aid to navigation to which tide gauges are to be attached, and the anticipated dates the gauges will be attached and removed. A copy of this notice shall be furnished at this time to the Contracting Officer.

b. The Contractor shall be required to remove any temporary tide gauges immediately upon completion of dredging operations and demobilization of dredging plant. The Contractor shall at his expense repair or replace any aids that he has damaged or destroyed as a result of the Contractor's use of such aids.

c. This provision refers only to Federal aids to navigation structures and does not authorize the Contractor to utilize aids that are not established and maintained by the U. S. Coast Guard. This provision also does not authorize the Contractor to utilize Federal navigation aid structures for any purposes other than the support of temporary tide gauges.

1.8.4 Contractor Layout for Survey of Beach Requirements

The Contractor shall submit for approval a base line drawing showing all offsets, elevations, reference lines, and range line locations to be utilized for the entire project prior to performing any surveying. This drawing shall be prepared and stamped by the independent Professional Engineer or Surveyor employed as specified above.

1.9 SEAGOING BARGE ACT

All dredges, barges, and vessels used for the transport of dredged material shall meet the applicable requirements of the Seagoing Barge Act (46 U.S.C. et seq). To document compliance with this act, the Contractor shall submit with his bid copies of U.S. Coast Guard Certificate of Inspection for each item of plant. Certification shall also be furnished to the Contracting Officer if additional plant is engaged during the course of the work.

1.10 ACCOMMODATIONS AND SUBSISTENCE ABOARD DREDGE FOR CONSTRUCTION REPRESENTATIVES

1.10.1 Accommodations

(a) Work Space - The Contractor shall furnish regularly to Government construction representatives on board the dredge a suitable working and storage space, equipped and maintained to the satisfaction of the Contracting Officer or his representative. As a minimum the facilities shall include a desk with chair for plan study, and a file drawer,

approximately 15" by 24", capable of being locked with a padlock. The working space need not be a separate room, but shall be properly lighted, ventilated, and heated.

(b) Cellular Telephone and FAX Machine - The Contractor shall provide a cellular phone and FAX machine aboard the dredge which shall be made available for official use by the Government Inspectors on a 24-hour a day basis to exclusively conduct Government business and emergency calls.

1.10.2 Subsistence

If the Contractor maintains on this work an establishment for the subsistence of his own employees, he shall, when required, furnish to inspectors employed on the work, and to all Government agents who may visit the work on official business, meals of a quality satisfactory to the Contracting Officer. The meals furnished will be paid for by the Government at a rate of \$5.00 for breakfast, \$5.00 for lunch, and \$14.00 for supper.

1.10.3 Costs

The entire cost to the Contractor for furnishing, equipping, and maintaining the foregoing accommodations shall be included in the contract price. If the Contractor fails to meet these requirements, the Contracting Officer will secure the facilities referred to above, and their costs will be deducted from payments due to the Contractor.

1.11 INSPECTION

1.11.1 General

The presence of the construction representative shall not relieve the Contractor of responsibility for the proper execution of the work in accordance with the specifications. The Contractor will be required:

a. To furnish, on the request of the Contracting Officer or any construction representative, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the dredging plant as may be reasonably necessary in inspecting and supervising the borrow work areas.

b. To furnish, on the request of the Contracting Officer or any construction representative, suitable transportation from all points within the beach fill placement area, to and from the various pieces of plant and the staging areas, and within the material placement area as may be reasonably necessary in inspecting and supervising the beach fill work. Should the Contractor refuse, neglect, or delay compliance with these requirements, the specific facilities may be furnished and maintained by the Contracting Officer, and any resultant cost incurred by the government will be deducted from any amounts due or to become due the Contractor.

1.12 CONTINUITY OF BEACH FILL WORK

Placement of the beach fill shall proceed in an orderly and consecutive manner. No payment will be made for work done in any acceptance section of the beach designated by the Contracting Officer until the entire acceptance section is brought to the shape and grade indicated and specified.

1.13 CONTINUITY OF CHANNEL BORROW AREA DREDGING

The Contractor shall submit for approval a channel borrow area material removal plan. The plan shall indicate the operations and procedures he intends to perform in each respective borrow area, work methods to be employed that will result in efficient hydraulic placement of the required amount of materials within the beach fill section, and the proposed station locations where material is to be removed. The material removal operations shall be performed to the maximum extent practical in contiguous sections of half or full channel widths that do not result in the creation of deep pits or holes in the borrow area.

1.14 CERF IMPLEMENTATION

The owner of the hopper dredge must have an active Basic Ordering Agreement (BOA) for the hopper dredge(s) on file with the Corps. The Contractor shall be obligated to make the hopper dredge(s) available to serve in the Corps of Engineers Reserve Fleet (CERF) at any time that the hopper dredge(s) is performing work under this contract. When the Contracting Officer is notified of the decision to activate the dredge(s) into the CERF, he shall take appropriate action to release the dredge(s). He may then extend or terminate the contract to

implement whichever action is in the best interest of the Government. The CERF Contractor shall also be subject to the following conditions:

a. The Director of Civil Works may require the Contractor to perform emergency dredging at another CONUS (48 contiguous states) site for a period of time equal to the remaining time under this contract at the date of notification plus up to ninety (90) days at the previously negotiated rate which appears on the schedule of prices in the BOA.

b. The Chief of Engineers may require the Contractor to perform emergency dredging at an OCONUS (Outside CONUS which includes Alaska, Hawaii, Puerto Rico, the Virgin Islands, or U.S. Trust Territories) site for a period of time equal to the time remaining under this contract at the date of notification plus up to one hundred eighty (180) days at the negotiated rate which appears on the schedule of prices in the BOA.

c. The CERF will be activated by the Chief of Engineers or the Director of Civil Works; then the Contracting Officer will notify the Contractor. From the time of notification, the selected hopper dredge(s) must depart for the emergency assignment within seventy-two hours for CONUS or ten days for OCONUS assignments.

d. A confirming delivery order will be issued pursuant to the Basic Ordering Agreement (BOA) by the Ordering Contracting Officer. Such delivery order shall utilize the schedule of rates in the BOA for the specific hopper dredge(s).

e. If during the time period specified in a, b, or c, above, a CERF vessel(s) is still required, the contract performance may be continued for additional time by mutual agreement.

1.15 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be

displayed by vessels of more than 65-feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Secretary of the Army and the Commandant, U. S. Coast Guard.

1.16 SAFETY AND ACCIDENT PREVENTION

1.16.1 Safety Plan

The contractor shall not commence work at a job-site prior to the Government's review of an acceptable contractor accident prevention plan per the US Army Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1) and discussion of the accident prevention plan at a prework meeting. Allow five days for Government review of the accident prevention plan.

1.16.2 Conflicts

The Contractor shall comply with Occupational Safety and Health Act (OSHA) Standards, Coast Guard, as well as the Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1). When a conflict exists between Corps of Engineers Safety and Health Requirements Manual, nationally recognized consensus standards, or the contract plans and specifications, the most stringent requirements as determined by the Contracting Officer will govern.

1.16.3 Corps of Engineers Standards

Corps of Engineers Manual EM 385-1-1, 1996 edition, is hereby supplemented or revised as follows.

1.16.3.1 Activity Hazard Analysis

Based on the construction schedule, the Contractor shall submit an activity hazard analysis of each major phase of work prior to entering that phase of activity. The analysis shall include major or minor hazards, as well as commonly recurring deficiencies that might possibly be encountered for that operation, and shall identify proposed methods and techniques of accomplishing each phase in a safe manner. The Project Superintendent and the Corps of Engineers Project Inspector shall sign the analysis. A copy of the analysis shall be kept on the job site and reviewed with employees during orientation and during weekly safety meetings.

1.16.3.2 Means of Escape for Personnel Quartered, or Working on Floating Plant

Two means of escape shall be provided for assembly, sleeping, and messing areas on floating plant. For areas involving 10 or more persons, both means of egress shall be through standard size doors opening to different exit routes. Where nine or fewer persons are involved, one of the means of escape may be a window (minimum dimensions 24 inches by 36 inches) that leads to a different exit route.

1.16.3.3 Emergency Alarms and Signals

(a) Emergency Alarms - Alarms shall be installed and maintained on all floating plant requiring a crew where it is possible for either a passenger or crewman to be out of sight or hearing from any other person. The alarm system shall be operated from the primary electrical system with standby batteries on trickle charge that will automatically furnish the required energy during an electrical-system failure. A sufficient number of signaling devices shall be placed on each deck so that the sound can be heard distinctly at any point above the usual background noise. All signaling devices shall be so interconnected that actuation can occur from at least one strategic point on each deck.

(b) Fire Alarm Signals - The general fire alarm signal shall be in accordance with Coast Guard Rules and Regulations for Cargo and Miscellaneous Vessels.

(c) Abandon Ship Signals - The signal for abandon ship shall be in accordance with the reference cited in (b) above.

(d) Man-Overboard Signal - Hail and pass the word to the bridge. All personnel and vessels capable of rendering assistance shall respond.

1.16.3.4 Hurricane Plan

A detailed plan for protection and evacuation of personnel and plant in the event of an impending hurricane or storm shall be submitted for approval as a part of the Contractor's Accident Prevention Program. The plan shall include as a minimum:

(a) The time each phase of the plan will be put in effect. The time shall be the number of hours remaining for the storm to reach the worksite if it continues at the predicted speed and direction.

(b) The safe harbor for personnel and plant specifically identified.

(c) The name of the boat that will be used to move the plant, its type, capacity, speed, and availability.

(d) The estimated time necessary to move the plant to the safe harbor after movement is started.

1.16.3.5 Equipment and Machinery Operator Authorization

The Contractor shall submit a list of designated personnel qualified and authorized to operate machinery and equipment. The list shall be maintained at the job site in a current status at all times.

1.16.3.6 Head Protection (Hard Hat)

The entire work site under this contract is designated as a hard hat area. The Contractor shall post the area in accordance with the requirements of EM 385-1-1, and shall insure that all prime and subcontractor personnel, vendors and visitors utilize hard hats while within the project area.

1.16.3.7 Attendance at Safety Meetings

In order to allow for maximum attendance at weekly tool box (Safety) meetings, and monthly supervisor meetings by Corps of Engineers personnel, Contractors shall notify the Contracting Officer 5 calendar days prior to the start of work, of the time and location of all such scheduled meetings. The contractor shall keep minutes and provide copies to all parties attending.

1.16.4 Hopper Dredge, Pump Out Buoys, Pipelines, and Attendant Plant

1.16.4.1 Equipment and Machines

All operable equipment and machines, shall be checked for:

(a) Manufacturer's safety instructions, permanent-mounted and easily read.

(b) Guard Rails and life-lines at overboard access areas, as applicable.

(c) Cover exposed moving parts with safety-guards to prevent someone from accidentally stepping or falling on them.

1.16.5 Dozers, Front-End Loaders, Backhoes, and Other Wheeled-Tract Machines

Dozers, front-end loaders, backhoes, and other wheeled-tract machines operated on the beach shall be equipped with rollover protection and seatbelts. All rotating or reciprocating parts, and any parts subject to high operational temperatures that are of such nature or so located as to be or become a hazard to the operating or attending personnel, shall be substantially guarded and insulated to the extent necessary to eliminate the hazard. Walking or working surfaces and platforms shall be of an anti-skid type.

1.16.5.1 Checks

All front end loader-backhoe machines and other machines, such as tractors that utilize a backhoe attachment, shall be checked for:

(a) Exposed backhoe boom swing foot pedals.

(b) Backhoe boom swing lever that can be reached by a man standing on the ground or on the outrigger support bracket.

1.16.5.2 Controls

Where these conditions exist, guards shall be fabricated to:

(a) Cover over exposed foot pedals to prevent someone from accidentally stepping on them.

(b) Inclose the swing lever so as to preclude operation from the ground or from the outrigger support bracket.

1.16.6 Crawler-, Truck-, and Wheel-Mounted Cranes

(a) When a crane is performing duty cycle work (such as clamshell, dragline, grapple, or pile driving) it does not require anti-two block equipment. If the crane is required to make a non-duty cycle lift (for example, to lift a piece of equipment, a tool box, or supplies), it will be exempt from the anti-two block equipment requirements if the following procedures are implemented:

(1) an international orange warning device (warning flag, warning tape, or warning ball) is properly secured to the hoist line at a distance of 8 to 10 feet above the hoist rigging;

(2) the signalperson (or an individual designated as the signalperson) acts as a spotter to alert the crane operator with a "STOP" signal when the warning device approaches the boom tip and the crane operator ceases hoisting functions when alerted of this; and

(3) while the non-duty cycle lift is underway, the signal person shall not stand under the load, shall have no duties other than signalperson, and shall comply with the signaling requirements of EM 385-1-1;

(b) Anti-two block devices are always required when hoisting personnel by crane or derrick.

1.16.7 Diving Operations

All diving operations shall be planned in accordance with the Corps of Engineers Safety Manual EM 385-1-1 and must be limited to those tasks that cannot be accomplished in any other manner. The Contractor shall submit for approval all information which may affect the work to be accomplished, including divers names, medical examination reports, qualifications of all divers and top-side tenders to be employed in the diving operations, plant and equipment to be employed on the work, and a written dive plan with sketches and narrative descriptions for each phase of the planned dive.

1.17 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE

1.17.1 Costs

Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data when the Government can determine both ownership and operating costs for each piece of equipment or equipment groups of similar serial and series from the Contractor's accounting records. When both ownership and operating costs cannot be determined from the Contractor's accounting records, equipment costs shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule", Region II. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the Contracting Officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect at the time the work was performed shall apply.

1.17.2 Rentals

Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36 substantiated by certified copies of paid invoices. Rates for equipment rented from an organization under common control, lease-purchase or sale-leaseback arrangements will be determined using the schedule except that rental costs leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees are allowable. Costs for major repairs and overhaul are unallowable.

1.17.3 Data

When actual equipment costs are proposed and the total amount of the pricing action is over \$25,000, cost or pricing data shall be submitted on the Standard Form 1411, "Contract Pricing Proposal Cover Sheet". By submitting cost or pricing data, the Contractor grants to the Contracting Officer or an authorizing representative the right to examine those books,

records, documents and other supporting data that will permit evaluation of the proposed equipment costs. After price agreement the Contractor shall certify that the equipment costs or pricing data submitted are accurate, complete and current.

18. BRIDGE-TO-BRIDGE RADIO COMMUNICATION

In order that radio communication may be made with passing vessels, all dredges engaged in work under this contract shall be equipped with bridge-to-bridge radio telephone equipment. The radio telephone equipment shall operate on a single channel very high frequency (VHF), FM, on a frequency of 156.65 megahertz per second with low power output having a communication range of approximately ten miles. The Federal Communications Commission has approved the frequency.

1.18.1 Radio

The Contractor shall provide the Government construction representative a portable radio capable of communicating with the dredge for the duration of work under this contract. The Contractor shall maintain the radio as required.

1.19 NOTIFICATION OF COAST GUARD

Prior to commencement of work on this contract, the Contractor shall notify the Commander, Fifth Coast Guard District of his intended operations to dredge and request that it be published in the Local Notice to Mariners. This notification must be given in sufficient time so that it appears in the Notice to Mariners at least 5 work days prior to the commencement of this contract.

1.19.1 Local Notice To Mariners

The Local Notice To Mariners (LNM) for the Fifth Coast Guard District is available by phone at (757) 398-6367, on the Internet at: <http://www.navcen.uscg.mil/lnm/d5/default.htm>, and e-mail address: ntm/d5oan@internet.uscg.mil. The LNM is the primary means for disseminating information concerning aids to navigation, hazards to navigation, and other items of marine information of interest to mariners on the waters of the United States, its territories, and possessions. These notices are essential to all navigators for the purpose of keeping their charts, light lists, Coast Pilots and other

nautical publications up-to-date. These notices are published weekly. They may be obtained free of charge, by making application to the Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704. If the Contractor encounters any objects on the channel bottom during dredging operations or transport of his plant that could be a hazard to navigation, he shall notify the Coast Guard immediately as to location and at the same time notify the Contracting Officer.

1.19.2 Navigation Aids

The Contractor shall not relocate or move any aids to navigation that has been established by the U.S. Coast Guard. If it becomes necessary to have any aid to navigation moved in order to complete dredging operations under this contract, the Contractor shall notify the U.S. Coast Guard in writing at the address above with a copy to the Contracting Officer not less than 15 calendar days prior to such need for movement. The Contractor shall notify the U.S. Coast Guard of the approximate time the navigation aid may be relocated to its original position. All notifications to the U.S. Coast Guard shall at the same time be provided to the Contracting Officer and recorded in the Daily Report of Operations. In the event that the Contractor disturbs or damages any navigation aid during work operations, which includes during mobilization or demobilization of his plant, the Contractor shall immediately stop the activity which disturbed or damaged the navigation aid, take immediate corrective action to prevent further disturbances or damage, and shall notify the Coast Guard immediately as to location, and at the same time notify the Contracting Officer.

1.20 ENVIRONMENTAL LITIGATION

1.20.1 Litigation

If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a

subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Contracting Officer in the administration of this contract under the terms of the "Suspension of Work" clause of this contract. The period of such suspension, delay, or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof. The term "environmental litigation" means, a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

1.21 HISTORICAL AND ARCHAEOLOGICAL FINDS

Federal legislation provides for the protection, preservation, and collection of scientific, prehistorical, historical, and archaeological data, including relics and specimens that might otherwise be lost as a result of any Federal construction project. Should the Contractor, or any of the Contractor's employees, or parties operating or associated with the Contractor, in the performance of this contract discover evidence of possible scientific, prehistorical, historical, or archaeological data, the Contractor shall immediately cease work at that location, and notify the Contracting Officer, giving the location and nature of the findings. The Contractor shall forward written confirmation to the Contracting Officer as directed. The Contractor shall exercise care so as not to disturb or damage shipwrecks, artifacts or fossils uncovered during excavation, dredging and material placement operations, and shall provide such cooperation and assistance as may be necessary to preserve the findings for removal or other disposition. Any person who, without written permission, injures, destroys, excavates, appropriates, moves or removes any historical or prehistorical artifact, object of antiquity, or archaeological resource is subject to arrest and penalty of law. Where appropriate by reason of discovery, the Contracting Officer may order delays in the time of performance or changes in the work, or both. If such delays or changes are ordered, an equitable adjustment will be made in accordance with the applicable clauses of the contract.

1.22 SCHEDULING AND DETERMINATION OF PROGRESS

In accordance with the Contract Clauses, the Contractor shall submit for approval a practicable Progress Schedule at the Pre-Construction Conference specified in SECTION 01200. The Progress Schedule shall be prepared and certified as complete by the Contractor's Quality Control Representative in the form of a chart graphically indicating the sequence proposed to accomplish each work feature or operation. The chart shall be prepared to show the starting and completion dates of all work features on a linear horizontal time scale beginning with date of Notice to Proceed, arrival date of Contractor's plant to the job site, all activities scheduled prior to dredging and beach fill operations, start and completion dates for each beach fill acceptance section, and calendar days to completion of all work. An arrow shall represent each activity in the construction. The head to tail arrangement of arrows shall flow from left to right and shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. Each arrow representing an activity shall be annotated to show the activity description and duration. Contractor shall indicate on the chart the important work features or operations that are critical to the timely overall completion of the project. Key dates for such important work features and portions of work features are milestone dates and shall be so indicated on the chart. This schedule will be the medium through which the timeliness of the Contractor's construction efforts is appraised. When changes are authorized that result in contract time extensions, the Contractor shall submit a modified chart for approval by the Contracting Officer. The Contract Clause entitled "SCHEDULE FOR CONSTRUCTION CONTRACTS" with reference to overtime and extra shifts, may be invoked when the Contractor fails to start or complete work features or portions of same by the time indicated by the milestone dates of the approved progress chart, or when it is apparent to the Contracting Officer from the Contractor's actual progress that these dates will not be met. Neither on this chart nor on the periodic chart that the Contractor is required to prepare and submit, as described in "SCHEDULE FOR CONSTRUCTION CONTRACTS" of the Contract Clauses, shall the actual progress to be entered include or reflect any materials that may be on the site, but are not yet installed or incorporated in the work. For payment purposes only, an allowance will be made by the Contracting Officer of 100 percent of the invoiced cost of materials or equipment

delivered to the site but not incorporated into the construction, pursuant to Contract Clause "PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS". The Contractor's progress schedule shall include a chart of the scheduled work activities plotting scheduled completion percentage based on dollar value on one axis and time on the other axis. The actual progress shall be plotted on the required periodic chart submittals to indicate the percentage of work scheduled and actually completed. When quantity volume variations for a respective beach fill acceptance section falls below or exceeds the projected amount by 5% or more, the Contractor shall revise the chart to accurately reflect the impact of such variations. The Contractor shall submit revised copies of the Progress Schedule with charted updates for completion of beach fill acceptance sections weekly unless directed otherwise by the Contracting Officer.

1.23 PROFIT

1.23.1 Weighted Guidelines

Weighted guidelines method of determining profit shall be used on any equitable adjustment change order or modification issued under this contract. The profit factors, expressed as a percent, shall be as follows:

<u>Factor</u>	<u>Rate</u>	<u>Weight</u>	<u>Value</u>
Degree of Risk	20		
Relative difficulty of work	15		
Size of Job	15		
Period of performance	15		
Contractor's investment	5		
Assistance by Government	5		
Subcontracting	<u>25</u>		
	100		

1.23.2 Values

Based on the circumstances of each procurement action, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column when totaled indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

1.23.2.1 Degree of Risk

Where the work involves no risk or the degree of risk is very small, the weighting should be .03; as the degree of risk increases, the weighting should be increased up to a maximum of .12. Lump sum items will have, generally, a higher weighted value than the unit price items for which quantities are provided. Other things to consider: the portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of labor included in costs, and whether the negotiation is before or after performance of work.

1.23.2.2 Relative Difficulty of Work

If the work is most difficult and complex, the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in to some extent with the degree of risk. Some things to consider: the nature of the work, by whom it is to be done, where, and what is the time schedule.

1.23.2.3 Size of Job

All work not in excess of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05.

1.23.2.4 Periods of Performance

Jobs in excess of 24 months are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed 30 days. No weight where additional time not required.

1.23.2.5 Contractor's Investment

To be weighted from .03 to .12 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, mobilization payment item, Government furnished property, equipment and facilities, and expediting assistance.

1.23.2.6 Assistance by Government

To be weighted from .12 to .03 on the basis of average to

above average. Things to consider: use of Government owned property, equipment and facilities, and expediting assistance.

1.23.2.7 Subcontracting

Shall be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted, the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.

1.24 PARTNERING

In order to most effectively accomplish this contract, the Government is willing to form a cohesive partnership with the Contractor. This partnership would strive to draw on the strengths of each organization in an effort to achieve a quality project done correctly, within budget, and on time. This partnership would be bilateral in make-up and partnership will be totally voluntary. Any cost associated with effectuating this partnership will be agreed to by all parties and will be shared equally with no change in contract price.

1.25 SUBCONTRACTS AND WORK COORDINATION

Contract Clauses "SUBCONTRACTS", "PERMITS AND RESPONSIBILITIES", and "MATERIAL AND WORKMANSHIP" are supplemented as follows:

(a) Divisions or sections of specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit work performed by any trade.

(b) Contractor shall be responsible for coordination of the work of the trades, subcontractors, and materials.

(c) The Government or its representative will not undertake to settle any difference between the Contractor and Contractor's subcontractors, or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Corps of Engineers projects, or for any other reason is considered by the Contracting Officer to be incompetent or otherwise objectionable.

1.26 TIDE LEVEL MEASUREMENT AND PREDICTION

1.26.1 Responsibility for Tide Measurements

It shall be the responsibility of the Contractor to obtain tide level measurements and predictions as required to conduct his dredging operations for the duration of the work. The Contractor is advised that the Government will not provide a tide staff gauge in the vicinity of the dredging channel borrow areas.

1.26.2 Telemetered Tidal Reference Station

The tidal reference station on the fishing pier at the south island of the Chesapeake Bay Bridge Tunnel is used by the Government for obtaining accurate tide level measurements for the Thimble Shoal Channel and Atlantic Ocean Channel borrow areas, with appropriate tidal zoning for each. A telemetric tidal reference system has been installed and is operated at this station by National Ocean Service (NOS). The tide gauge and electric tape gauge are in a steel room below the deck on the fishing pier and 295 feet west of the inshore end of the pier. The Contractor cannot have physical access to the tidal reference station; however, the Contractor can obtain tide information by using the telemetry system. Access to this information is available by the computer software program that NOS uses to make predictions for the NOS Tidal Reference Stations. The NOS office is not in the business of software development and distribution. The program NOS uses was developed for the use by NOS and is not user friendly. The program is written in FORTRAN and requires the use of a separate control file for each location that predictions are being made. A copy of the tidal prediction program is available from the NOS office of Oceanographic Products and Services Division by calling (301) 713-2815 between 7:00 a.m. and 3:00 p.m. Eastern Time. The Contractor can also submit a request for a copy of the program to the NOS at their E-mail address at ipss@ceob.nos.noaa.gov. The Contractor is informed there is a fee for a copy of this program and that it is the responsibility of the Contractor to obtain the necessary software from the NOS and all computer hardware required to use the telemetered tidal reference station at no additional cost to the Government.

1.26.3 Telemetered System Malfunctions

In the event that the NOS telemetered tide system is not in service, the Contractor shall immediately notify the Chief, Navigation Support and Survey Section, telephone (757) 441-7125, or FAX (757) 441-7664.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

SECTION 01200

PROJECT MEETINGS

2/01

PART 1 GENERAL

1.1 PRECONSTRUCTION CONFERENCE

1.1.1 Notification

An authorized representative of the Contracting Officer will schedule and conduct a preconstruction conference in conjunction with the Quality Control Coordination Meeting within ten calendar days of the anticipated start of construction. The Contractor is encouraged to have an officer of his Company at the conference. This conference will be held at a location specified by the Contracting Officer's authorized representative.

1.1.2 Purpose

The purpose of this preconstruction conference is to enable the Contracting Officer's authorized representative to outline the procedures that will be followed by the Government in its administration of this construction contract and to discuss the performance that will be expected from the Contractor. This conference will allow the Contractor an opportunity to ask questions about the Government's supervision and inspection of contract work, about regulations, and any other questions he may have prior to starting the work. The Contracting Officer's authorized representative may invite City of Virginia Beach and other Government personnel to attend this conference.

1.1.3 Topics

The following is a list of items and plans for discussion during this conference. This is not considered to be a complete listing and may be expanded or revised at the discretion of the Contracting Officer. The Contractor shall submit the following items and plans for approval prior to the preconstruction conference. All points of contact for submittal of the items and plans noted shall be provided in the Contractor's notice of award. Any questions the Contractor may have concerning the plans or program will be resolved at this meeting.

- a. Authority of the Contracting Officer's Representative and organization.
- b. Contractor's Safety Plan.
- c. Contractor's Quality Control Plan.
- d. Contractor's Environmental Protection Plan.
- e. Contractor's Progress Schedule - In the form of a bar chart showing all phases and dates for the progress of the scheduled work, including timeliness and basis of pre-construction and post-construction surveys, work acceptance requirements, and progress payments relative to conformance to the progress schedule.
- f. Correspondence Procedures.
- g. Contractor Labor Standards Provisions.
- h. Contractor Plan of Operations - The Contractor shall indicate his method(s) of layout and accomplishment of the scheduled work, and his verification/certification procedures for accuracy of the respective areas of work to be accomplished.
- i. Contract Modifications and Administrative Procedures.
- j. Contractor's Job Layout and Storage Area Plan.
- k. Procedures for Processing Shop Drawings, if applicable.
- l. Payment Estimate Data and Procedures.
- m. Contractor Utilities.
- n. Security Requirements and Other Regulations, if applicable.
- o. Government Furnished Equipment, if applicable.
- p. Disposition of Salvage Property.
- q. Contractor Insurance Requirements.
- r. Value Engineering Program.

s. Contractor Performance Evaluation.

t. Contractor's Environmental Control Plan including

(1) Spill Control Plan

(2) Recycling and Waste Minimization Plan

(3) Contaminant Prevention Plan

u. Contractor Required Notification Procedures

v. Contractor's Submittal Register

1.1.4 Approvals

The Contractor shall submit his Safety Plan, Quality Control Plan, and Environmental Protection Plan for review prior to this meeting. These plans may be approved or approved with comments at the conference. Construction work shall not proceed until after this meeting has been held, all specified Plans have been approved, and the Notice to Proceed has been received and acknowledged by the Contractor.

1.1.5 Minutes of the Meeting

The Government will prepare legibly written or typed minutes of the meeting and will provide the Contractor with a signed original for review and concurrence. The minutes shall include all items discussed at the meeting and the Government will make all corrections provided by the Contractor and resubmit the corrected minutes to the Contractor within seven days.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

SECTION 01270

MEASUREMENT AND PAYMENT

2/01

PART 1 GENERAL

1.1 REFERENCES (Not Used)

1.2 SUBMITTALS (Not Used)

1.3 LUMP SUM PAYMENT ITEMS

Payment items for the work of this contract for which contract lump sum payments will be made are listed in the BIDDING SCHEDULE and described below. All costs for items of work, which are not specifically mentioned to be included in a particular lump sum or unit price payment item, shall be included in the listed lump sum item most closely associated with the work involved. The lump sum price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for which separate payment is not otherwise provided.

1.3.1 Base Bid Payment Item No. 0001 Mobilization and Demobilization

All costs connected with the mobilization and demobilization of all of the Contractor's dredging and beach fill placement plant and equipment as defined below will be paid for at the contract lump sum price for this item. Sixty percent of the lump sum price will be paid to the Contractor upon completion of his mobilization at the entire work site. The remaining forty percent will be paid to the Contractor upon completion of demobilization from the entire work site. In the event the Contracting Officer considers that the amount in this item, sixty percent which represents mobilization and forty percent which represents demobilization does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will

result in payment of actual mobilization costs, as determined by the Contracting Officer, at the completion of mobilization, and actual demobilization costs, as determined by the Contracting Officer, at the completion of demobilization. The determination of the Contracting Officer is not subject to appeal.

1.3.1.1 Mobilization

Mobilization shall include all costs for operations accomplished prior to commencement of actual dredging and beach fill placement operations. This shall include transfer of dredge and attendant plant, booster pumps and pump out buoys, bulldozers and other like equipment and machinery including pipelines associated with beach fill placement operations, preparation of the Contractor's long term staging area used for off beach equipment and material storage, and any other associated work that is necessary in advance of the actual dredging and beach fill placement operations.

1.3.1.2 Demobilization

Demobilization shall include general preparation for transfer of dredging and beach fill plant as described in Paragraph "Mobilization" above to its home base, cleanup of the Contractor's long term staging area, and transfer of the dredging and beach fill plant to its home base.

1.4 UNIT PRICE PAYMENT ITEMS

Payment items for the work of this contract on which the contract unit price payments will be made are listed in the BIDDING SCHEDULE and described below. The unit price and payment made for each item listed shall constitute full compensation for surveys and volume computations performed by the independent Surveyor or Engineer, endangered species monitoring and inspections, furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for each of the unit price items.

1.4.1 Base Bid Payment Item No. 0002 Beach Fill

Payment to be made for this item includes all costs associated with dredging beach fill from the channel borrow areas,

transport of the dredged beach fill material to the pump out mooring facility, construction of the designated beach to the lines and grades indicated, and all other associated costs of removal and placement of material as indicated and specified exclusive of the mobilization and demobilization as defined above. The total cost of this item shall be based on the cubic yard price bid for this item and the computed difference in the amount of material measured by the cubic yard in place for the pre-construction and post-construction surveys for each beach fill segment.

1.4.2 Optional Bid Payment Item No. 0003 Beach Fill

Payment to be made for this item includes all costs associated with dredging beach fill from the channel borrow areas, transport of the dredged beach fill material to the pump out mooring facility, construction of the designated beach to the lines and grades indicated, and all other associated costs of removal and placement of material as indicated and specified exclusive of the mobilization and demobilization as defined above. The total cost of this item shall be based on the cubic yard price bid for this item and the computed difference in the amount of material measured by the cubic yard in place for the pre-construction and post-construction surveys for each beach fill segment.

1.4.3 Optional Bid Payment Item No. 0004 Contracting Officer Directed 24-Hour Stand By Time

Payment for this item shall be based on all costs associated with the Contractor ceasing all dredging and beach fill operations and placing his plant in a standby status for a period of 24 hours. The Contractor may be directed to enter this status up to four times during the contract period.

1.4.4 Optional Bid Payment Item No. 0005 Contracting Officer Directed 8-Hour Stand By Time

Payment for this item shall be based on all costs associated with the Contractor ceasing all beach fill operations from 11:00pm to 7:00am, except dredging operations that do not require use of the pump out facility, and placing his beach fill plant in a standby status for a period of 8 hours. The Contractor may be directed to enter this status up to ninety one times during the contract period.

1.5 Misplaced Material

Any material that is deposited elsewhere than in places designated or approved by the Contracting Officer will not be paid for, and the Contractor may be required to remove such misplaced material and deposit it where directed by the Contracting Officer at the Contractor's expense.

1.6 Monthly Partial Payments

Monthly partial payments will be based on the total volume of material placed and accepted for each beach fill segment as determined by the Contracting Officer.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION (Not Applicable)

-- End of Section --

SECTION 01330

SUBMITTAL PROCEDURES

2/01

PART 1 GENERAL

1.1 SUBMITTAL IDENTIFICATION AND CLASSIFICATION

The Contractor shall insure all submittals as required in the Contract are submitted to the government as identified and in accordance with the procedures specified in this Section. Submittals may be required for work features and procedures in the specifications that are not listed or classified as indicated below. The Contractor shall still be required to list these submittals in his Submittal Register as required by the respective specification, and designate the submittal and action required in the register.

1.1.1 Submittal Identification

Submittals required are identified by SD numbers and titles as follows:

- SD-01 Preconstruction Submittals
- SD-02 Shop Drawings
- SD-03 Product Data
- SD-04 Samples
- SD-05 Design Data
- SD-06 Test Reports
- SD-07 Certificates
- SD-08 Manufacturer's Instructions
- SD-09 Manufacturer's Field Reports
- SD-10 Operation and Maintenance Data
- SD-11 Closeout Submittals

1.1.2 Submittal Classification

Submittals are classified as follows:

a. Government Approved

Government approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the

Contract Clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings."

b. Information Only

All submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above.

1.2 APPROVAL OF SUBMITTALS

The approval of submittals by the Contracting Officer's Representative (COR), shall not be construed as a complete check, but will indicate only that the general method of construction, work scheduling, and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for the dimensions, layout, and satisfactory construction of all work as indicated and specified. After submittals have been approved by the COR, resubmittal for the purpose of changing the approved Work Plan, Progress Schedule, designated Acceptance Sections, or for any other reason, will not be given consideration unless accompanied by an explanation as to why a change is necessary.

1.3 DISAPPROVED SUBMITTALS

The Contractor shall make all corrections required by the COR and promptly furnish a corrected submittal with the Daily CQC Report as specified for the initial submittal. If the Contractor considers any correction indicated on the submittal(s) to constitute a change to the contract, notice as required under the Contract Clause entitled "Changes" shall be given at the same time to the COR.

1.4 WITHHOLDING OF PAYMENT

Payment for any part of the scheduled work accomplished by the Contractor, including transportation of the Contractor's plant to or from the site of the work, will not be made if required approvals for all parts of the scheduled work have not been obtained.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 GENERAL

The Contractor shall submit all items required and specified in these specifications, and as may be required by other portions of the scheduled work. Proposed deviations from the contract requirements shall be clearly identified. The required submittals shall be listed in the Contractor's Work Plan and on the Contractor's Submittal Register Form 4288-R. All requirements of submittals shall be coordinated with SECTION 01451. Any questions regarding submittals required of the Contractor will be discussed at the Preconstruction Conference specified in SECTION 01200. At this Conference, and during the progress of the work, the COR may request submittals in addition to those listed when deemed necessary to adequately describe the work covered in the respective sections. Dimensions and units of weights and measures used on all submittals shall be the same as indicated and specified. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved as complete by the CQC representative as specified in SECTION 01451.

3.2 SCHEDULING

Submittals covering component items forming a system or items that are interrelated, such as access/egress to the work area, and delivery/storage of materials prior to construction of features shall be scheduled to be coordinated with the requirements specified and submitted concurrently.

3.2.1 Submittal and Report Identification

All submittals and reports shall be complete, properly marked, adequately detailed, and identified with location of occurrence in the respective specification section with paragraph number, drawing number and location, and respective Plan or Report requirement, as applicable. The Contractor's CQC representative shall sign and date each submittal and report as complete.

3.3 SUBMITTAL REGISTER (ENG FORM 4288)

At the end of this SECTION is a sample Submittal Register (ENG Form 4288-R) showing those plans, lists, and items of equipment and materials for which submittals are required by the specifications. The Contractor is informed this sample form may not list all submittals that may be required of the Contractor; however, the Contractor shall utilize this form as a guide to

provide, with his CQC Plan for approval, a complete Submittal Register listing all submittals required for the duration of the contract. The Submittal Register shall consist of individual pages representing the respective Specification Sections as shown in the attached sample. Columns "d" through "q" of the sample form indicate the method the Contractor is to use in identification of his submittals. In the respective Specification Sections and when so directed by specified requirements in other parts of the contract for a particular type of submittal, the Classification status to be inserted in Columns "p" and "q" is indicated. The Contractor's Quality Control Representative shall certify in writing as part of the CGC Plan the appropriate designation for all submittals has been made. The remainder of columns and how they are to be utilized during administration of the contract will be addressed at the Pre-Construction Conference as noted in SECTION 01200.

3.4 TRANSMITTAL FORM (ENG FORM 4025)

At the end of this SECTION is a sample Transmittal Form (ENG Form 4025) which shall be used for transmittal coordination of all submittals. This form shall be completed by the Contractor identifying each item to be submitted. Special care shall be exercised to ensure proper listing of the date of the submittal transmittal, specification section and paragraph number pertinent to the data submitted for each item, and numerical sequence coordination with the Submittal Register Form 4288-R, Column "b".

-0-

Instructions For Completing ENG FORM 4025-R, Mar 95

A. Enter date the submittal is issued.

B. Enter the Transmittal Number under which the submittal was made.

The Transmittal Number shall have the following format:

A-B.C

Where: A is the specification section

B is a consecutive number where 1 would be the first transmittal under the given specification section, 2 would be the second transmittal, etc.

C is a consecutive number identifying resubmittals. Number 1 would be the first resubmittal, 2 the second, etc.

Examples of Transmittal Numbers under Specification Section 01451:

01451-1
01451-2
01451-1.1 (first resubmittal of 01451-1)
01451-3

C. Enter name and address of Corps of Engineers reviewing office.

D. Enter name and address of Contractor.

E. Enter contract number.

F. If this is the first submittal of information for this item number, check the box for "New Submittal". If not, check the box for "Resubmittal".

G. If the "Resubmittal" box is checked, enter the previous Transmittal No.

H. Enter the specification section that applies to this Transmittal Form. A separate Transmittal Form shall be used for submittals under separate sections of the specifications.

I. Enter name and location of project.

J. Indicate whether the submittal is "For Information Only (FIO)" or for "Government Approval (Gov't Approval)".

K. Enter the Item No. as identified on the Submittal Register.

L. Enter the Description of the item submitted as identified on the Submittal Register.

M. Enter information as necessary. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certification."

N. Enter the number of copies of submittal data attached.

O. Enter the specification paragraph number as identified on the Submittal Register using the following format:

Spec. Section - Paragraph number

P. Enter information as necessary.

Q. Enter Contractor Action Code. See reverse side of ENG Form 4025 for applicable codes.

R. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications. Attach a written statement describing the variation.

S. Review code assigned by the Government reviewer.

T. Remarks from the Contractor or Government review comments. Government review comments may also be placed on a separate sheet of paper.

U. Signature of Contractor reviewer.

V. Number of enclosures being returned to the Contractor by the Government reviewer

W. Signature and title of Government approving authority.

X. Date of review by the Government.

Other: In submitting manufacturer's literature or similar information, the Contractor shall clearly identify the item proposed for use.

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE <small>(Read instructions on the reverse side prior to initiating this form)</small>									
DATE		TRANSMITTAL NO.							
1 Jan 97									
SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS (This section will be initialed by the contractor)									
TO:		FROM:							
SPECIFICATION SEC. NO. (Cover only one section with each transmittal)		PROJECT TITLE AND LOCATION							
CONTRACT NO.		CHECK ONE: <input type="checkbox"/> THIS IS A NEW TRANSMITTAL <input type="checkbox"/> THIS IS A RESUBMITTAL OF TRANSMITTAL							
ITEM NO.	DESCRIPTION OF ITEM SUBMITTED <small>(Type, size, model number, etc.)</small>	MFG OR COMM. CAT., CURVE DRAWING OR BROCHURE NO. <small>(See instruction no. 4)</small>	NOL. OF COPIES	CONTRACT REFERENCE DOCUMENT		FOR CONTRACTOR USE CODE	VARIATION		
				SPEC. PARA. NO.	DRAWING SHEET NO.				
1			1						
2									
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REMARKS		I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other notes stated.							
ENCLOSURES RETURNED (List by item No.)		NAME AND SIGNATURE OF CONTRACTOR							
SECTION II - APPROVAL ACTION		NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY							
DATE		DATE							

(922 415 1-10)

Source: *Author's calculations*.

TITLE AND LOCATION:

CONTRACTOR

APPLICATION SECTION

01005

Beach Erosion Control and Hurricane Protection

[illegible]

Contract No.

1922-4 (5, 2-2.07)

TITLE AND LOCATION

Beach Erosion Control and Hurricane Protection

CONTRACTOR

Classification section

01330

[illegible]

1

TITLE AND LOCATION

Beach Erosion Control and Hurricane Protection

CONTRACTOR

SPECIFICATION SECTION

01355

[illegible]

Contract No.

1008 415 1-105

TITLE AND LOCATION

CONSTRUCTION

DESCRIPTION SECTION

01451

Beach Erosion Control and Hurricane Protection

a.	b.	c.	d.	e.	TYPE OF SUBMITTAL												CLASSIFICATION	CONTRACTOR SCHEDULE DATES				CONTRACTOR ACTION			GOVERNMENT ACTION		REMARKS																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
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SPECIFICATION PARAGRAPH NUMBER	DESCRIPTION OF ITEM SUBMITTED	DISSEMINATION	INSTRUMENTATION	STANDARDIZATION	TESTING	RESEARCH	DEVELOPMENT	CONSTRUCTION	OPERATION	MAINTENANCE	REPAIR	REPLACEMENT	REVIEW	REVISION	REWORK	RETEST	RECALIBRATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RECOMMENDATION	RE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1998 415 1-101

[illegible]

CONTRACT NO.

1992 4.15 1.0 0.01

TITLE AND LOCATION

CONSTRUCTION

MULTIPLICATION SECTION

02882

Beach Erosion Control and Hurricane Protection

[illegible]

SECTION 01355

ENVIRONMENTAL PROTECTION

2/01

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

CODE OF FEDERAL REGULATIONS (CFR)

40 CFR 261 Identification and Listing of Hazardous Waste

ENGINEERING MANUALS (EM)

EM 385-1-1 (1996) U.S. Army Corps of Engineers Safety and Health Requirements Manual

1.2 DEFINITIONS

Environmental pollution and damage is defined as the presence of chemical, physical, or biological elements or agents that adversely affect human health or welfare; unfavorably alter ecological balances of plant or animal communities; or degrade the environment from an aesthetic, cultural or historic perspective. Environmental protection is the prevention/control of pollution and habitat disruption that may occur during construction. The control of environmental pollution and damage requires consideration of air, water, land, biological and cultural resources; includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive materials; and other pollutants.

1.3 ENVIRONMENTAL PROTECTION REQUIREMENTS

The Contractor shall comply with all applicable Federal, State, and local laws and regulations. The Contractor shall provide environmental protective measures and procedures to prevent and control pollution, limit habitat disruption, and correct environmental damage that occurs during construction.

1.3.1 Protection of Features

This section supplements the Contract Clause PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS. The Contractor shall prepare a list of features requiring protection under the provisions of the contract clause that are not specifically identified on the drawings or otherwise specified as environmental features requiring protection. The Contractor shall protect those environmental features as indicated and specified, in spite of interference that their preservation may cause to the Contractor's work under the contract.

1.4 ENVIRONMENTAL PROTECTION PLAN

As a part of the Contractor's Work Plan, the Contractor shall submit an Environmental Protection Plan for review and acceptance by the Contracting Officer. This Environmental Protection Plan shall consist of a written narrative, as well as any supplemental drawings, documents, and photographs required to verify the Contractor's work will be in accordance with all laws and regulations governing the work as indicated and specified. The Contractor shall submit this plan and all supplementary data for approval at the Preconstruction Conference as noted in SECTION 01200. The Contractor will be informed in writing of any revisions as may be required by the Contracting Officer and submit a final plan for final approval not later than 5 calendar days prior to start of scheduled construction activities. Acceptance is conditional and is predicated upon satisfactory performance during construction. The Government reserves the right to require the Contractor to make changes in the Environmental Protection Plan or operations if the Contracting Officer determines that environmental protection requirements are not being met. The plan shall detail the actions that the Contractor shall take to comply with all applicable Federal, State, and local laws and regulations concerning environmental protection and pollution control and abatement, as well as the additional specific requirements of this contract. No physical work at the site shall begin prior to acceptance by the Contracting Officer of the Contractor's Environmental Protection Plan covering the work to be performed. The environmental protection plan shall comply with the requirements of EM 385-1-1 and include, but not be limited to, the following:

1.4.1 List of State and Local Laws and Regulations

The Contractor shall provide, as part of the Environmental Protection Plan, a list of all State and local environmental laws and regulations that apply to the construction operations under the Contract.

1.4.2 Spill Control Plan

The Contractor shall include as part of the environmental protection plan, a Spill Control Plan. The plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by the Emergency Response and Community Right-to-Know Act or regulated under State or local laws or regulations. The Spill Control Plan supplements the requirements of EM 385-1-1. This plan shall include as a minimum:

a. The name of the individual who shall be responsible for implementing and supervising the containment and cleanup.

b. Training requirements for Contractor's personnel and methods of accomplishing the training.

c. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.

d. The names and locations of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of an unforeseen spill emergency.

e. The methods and procedures to be used for expeditious contaminant cleanup.

f. The name of the individual who shall report any spills or hazardous substance releases and who shall follow up with complete documentation. This individual shall immediately notify the Contracting Officer in addition to the legally required Federal, State, and local reporting channels (including the National Response Center at 1-800-424-8802 and the DEQ Tidewater Regional Office at (757) 518-2077 if a reportable quantity spill occurs. The plan shall contain a list of the required reporting channels and telephone numbers.

1.4.3 Recycling and Waste Minimization Plan

The Contractor shall submit a Recycling and Waste Minimization Plan as a part of the Environmental Protection Plan. The plan shall detail the Contractor's actions to comply with the following recycling and waste minimization requirements:

a. The Contractor shall participate in State and local government sponsored recycling programs to reduce the volume of solid waste materials at the source.

1.4.4 Contaminant Prevention Plan

As a part of the Environmental Protection Plan, the Contractor shall prepare a contaminant prevention statement identifying potentially hazardous substances to be used on the job site and intended actions to prevent accidental or intentional introduction of such materials into the air, water, or ground. The Contractor shall detail provisions to be taken to meet Federal, State, and local laws and regulations regarding the storage and handling of these materials.

1.4.5 Environmental Monitoring

The Contractor shall include in the plan, as coordinated with the Job Hazard Analysis and required in the specifications, the details of environmental monitoring requirements and a description of how this monitoring will be accomplished under the laws and regulations governing the work.

1.4.6 Preconstruction Survey

The Contractor shall perform a survey of the project site with the Contracting Officer and take photographs showing existing environmental conditions in and adjacent to the site. The results of this survey shall be prepared by the Contractor and copies included in the plan. The preconstruction survey shall identify requirements for the following:

a. Methods for protection of features to be preserved within authorized work areas like trees, shrubs, vines, grasses and ground cover, landscape features, air and water quality, fish and wildlife, soil, historical, archaeological, and cultural resources.

b. Procedures to be implemented to provide the required environmental protection, to comply with the applicable laws and regulations, and to correct pollution due to accident, natural causes, or failure to follow the procedures of the environmental protection plan.

c. Location of the solid waste disposal area.

d. Drawings showing locations of any proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials.

e. Traffic control plan including measures to reduce erosion of temporary roadbeds by construction traffic, especially during wet weather and dredged material placement operations, and the amount of mud transported onto paved public roads by vehicles or runoff.

f. Methods of protecting surface and ground water during construction activities.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 SPECIAL ENVIRONMENTAL PROTECTION REQUIREMENTS

3.1.1 Wetlands and Natural Habitat

Use of the Contractor's plant to construct the scheduled work, including the associated use of ropes, cables, or guys over wetlands and in natural habitat areas, shall be scheduled in a manner to disturb the marsh and natural habitat areas to the minimum necessary to accomplish the work. Any damage to wetlands or natural habitat areas shall be repaired to original condition at no additional expense to the government. The Contracting Officer will notify the Contractor in writing of any observed noncompliance with the previously mentioned Federal, State or local laws or regulations, permits, and other elements of the Contractor's environmental protection plan. The Contractor shall, after receipt of such notice, inform the Contracting Officer of proposed corrective action and take such action when approved. If the Contractor fails to comply promptly, the

Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or costs or damages allowed to the Contractor for any such suspensions.

3.1.2 U.S. Department of Agriculture (USDA) Quarantined Considerations

The Contractor shall thoroughly clean all construction equipment at the prior job site in a manner that ensures all residual soil is removed and that egg deposits from plant pests are not present. The Contractor shall consult with the USDA Plant Protection and Quarantine (USDA - PPQ) jurisdictional office for additional cleaning requirements that may be necessary.

3.1.3 Disposal of Solid Wastes

Solid waste is rubbish, debris, waste materials, garbage, and other discarded solid materials. Solid waste shall be placed in containers and disposed on a regular schedule. All handling and disposal shall be conducted in such a way as to prevent spillage and contamination. The Contractor shall transport all solid waste and dispose in compliance with Federal, State, and local requirements.

3.1.4 Disposal of Contractor-Generated Hazardous Wastes

Hazardous wastes are hazardous substances as defined in 40 CFR 261, or as defined by applicable State and local regulations. Hazardous waste generated by construction activities shall be removed from the work area and be disposed in compliance with Federal, State, and local requirements. The Contractor shall segregate hazardous waste from other materials and wastes, and shall protect it from the weather by placing it in a safe covered location; precautionary measures against accidental spillage such as berming or other appropriate measures shall be taken. Hazardous waste shall be removed from Government property within 60 days. Hazardous waste shall not be dumped onto the ground, into storm sewers or open water courses, or into the sanitary sewer system.

3.1.5 Fuels and Lubricants

Fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants and waste oil to be

discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with Federal, State, and local laws and regulations.

3.2 PROTECTION OF WATER RESOURCES

The Contractor shall keep construction activities under surveillance, management, and control to avoid pollution of surface and ground waters.

3.2.1 Monitoring of Water Areas Affected by Construction Activities

The Contractor shall perform monitoring, inspections, sampling and testing, reporting, and record keeping as indicated and specified.

3.3 INSPECTION

If the Contracting Officer notifies the Contractor in writing of any observed noncompliance with contract requirements or Federal, State, or local laws and regulations, the Contractor shall inform the Contracting Officer of proposed corrective action and immediately take such action to correct the noncompliance. If the Contractor fails to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action is taken. No time extensions will be granted or costs or damages allowed to the Contractor for any such suspension.

3.4 MAINTENANCE OF POLLUTION CONTROL FACILITIES

The Contractor shall maintain all constructed pollution control facilities and portable pollution control devices for the duration of the Contract or for the length of time construction activities create the particular pollutant.

3.5 TRAINING OF CONTRACTOR PERSONNEL

Contractor personnel shall be trained in environmental protection and pollution control. The Contractor shall conduct environmental protection/pollution control meetings for all Contractor personnel as a part of the weekly toolbox meetings. The training and meeting agenda shall include methods of detecting and avoiding pollution, familiarization with pollution standards, both statutory and contractual, installation and care

of facilities, and instruments required for monitoring purposes to ensure adequate and continuous environmental protection/pollution control. Anticipated hazardous or toxic chemicals or wastes, and other regulated contaminants, shall also be discussed. Other items to be discussed shall include recognition and protection of archaeological sites and artifacts, wildlife and waterfowl habitats, and construction material placement operations.

3.6 PROTECTION OF MARINE ANIMALS, WILDLIFE AND VEGETATION

The Contractor is informed that the channel borrow areas and beach fill work area are in a portion of Virginia frequented by migratory birds and is a native habitat for sea turtles, whales, eagles, hawks, egrets, herons, pelicans, terns, and other wildlife that are identified as either endangered species protected by federal law or species of special concern for Commonwealth of Virginia agencies. If, in the performance of this contract, evidence of the possible disturbance to any such migratory bird or listed species may occur, the Contractor shall notify the Contracting Officer immediately, giving the location and nature of the findings. In the event of discovery of a sea turtle or sea turtle nest on the beach, the Contractor shall provide personnel to monitor and protect the discovery until designated persons as approved are in place to move the turtle or nest. The Contractor shall advise all personnel associated with the operation of the vessels and plant of the civil and criminal provisions of the Endangered Species Act, the Migratory Bird Act, and the Marine Mammal Protection Act. The Contractor shall comply with all laws and regulations governing the work and the provisions set forth in this Section. In the event that endangered or protected species are affected by this work, the work under this contract may be suspended or terminated as determined by the Contracting Officer. All crew members of the hopper dredge, attendant plant operators, and those employed on the beach fill work shall be required to read and certify in writing they are aware of the contents of this specification and the Contractor's Environmental Protection Plan. Copies of this Section and the Environmental Protection Plan, including a posting warning of the civil and criminal liabilities that violators are subject to for non-compliance to the requirements of them, shall be clearly posted with other required postings on-site for employees.

3.7 SPECIAL PRECAUTIONS FOR SEA TURTLES ON THE BEACH

The Contractor shall be aware that the nesting season for sea turtles within the beach fill area is 1 May through 31 August. During this period, a qualified turtle monitor approved by the U. S. Fish and Wildlife Service shall be employed by the Contractor to monitor for stranded turtles, turtle trails, turtle nesting activity, and be currently licensed and permitted in accordance with U. S. Fish and Wildlife requirements to relocate turtles and nests if needed. This person shall physically survey by 9:00am each morning for the presence of turtles and turtle nests along the high tide line in one direction, along the tide line in the opposite direction, and a thorough visual inspection in the entire projected beach fill area that the Contractor intends to work that day. When the Contractor performs beach fill placement operations at night, inspections shall be performed as described above by the approved turtle monitor every two hours. The approved turtle monitor shall remain on-call 24 hours a day during this period and be at the project site within 2 hours of any incident notification to them of a stranded turtle or turtle nest discovery. If a turtle nest is dug up by beach construction activities or found by any other means in the area where the Contractor's activities may disturb the nest, the Contractor must stop all activities in the area and protect the discovery until the approved turtle monitor is notified and on the scene. Turtles and turtle nests shall only be moved or otherwise be disturbed by the turtle monitor approved by the U. S. Fish and Wildlife Service. The turtle monitor must prepare an Incident Statement on approved forms for all findings, recording the contract number and title, date and time of discoveries, location and condition of findings, and provide a copy to the Contractor as directed. The turtle monitor shall at the same time forward a signed copy of the Incident Statement within 24 hours to the U. S. Fish and Wildlife Service, Ecological Services Field Office (attention: Karen Mayne), 6669 Short Lane, Gloucester, Virginia 23061 and the National Marine Fisheries Service, Northeast Regional Office, Protected Resources Division (attention: Mary Colligan), 1 Blackburn Drive, Gloucester, Massachusetts 01930. The Contractor shall acknowledge the time and date of his receipt of the Incident Statement in his Daily Report of Operations and include a copy in his Daily Report to the Contracting Officer.

3.8 SPECIAL PRECAUTIONS FOR SEA TURTLE AND WHALES DURING DREDGING OPERATIONS

The Contractor shall develop a written Operational Plan to Minimize Turtle Takes and Whale Encounters. This Plan shall be prepared in consultation with the National Marine Fisheries Service Northeast Regional Office, Protected Resources Division (attention: Mary Colligan), 1 Blackburn Drive, Gloucester, Massachusetts 01930 for obtaining the services of qualified Endangered Species Observers as required to be employed by the Contractor during dredging work that is performed when surface water temperatures exceed 11 degrees Celsius and from 1 April to 30 November. The Contractor shall submit this Operational Plan as part of the Environmental Protection Plan. The Contractor shall ensure the adequate instruction and training of all personnel associated with the operation of the dredging vessel and his near shore plant regarding the possible presence of endangered sea turtles and whales and the need to avoid contact and collisions with these animals.

3.8.1 Endangered Species Observers on Bridge Watch

The Contractor shall be required to provide on all towed and self-propelled vessels and plant National Marine Fisheries Service approved Endangered Species Observers on bridge watch to monitor the surface of the water for the presence of sea turtles when surface water temperatures are above 11 degrees Celsius and from 1 April to November 30, and for whales at all times. In the event that Endangered Species Observers bridge watch personnel observe endangered species, they shall inform the master of the vessel and appropriate action shall be taken to avoid a vessel collision with these animals.

3.6.2 Endangered Species Observer Requirements

Endangered Species Observers shall be National Marine Fisheries Service approved observers with demonstrated abilities to identify whale species, sea turtle species, and turtle parts. A minimum of one observer shall be on-board the dredge at all times during dredging, borrow material removal, and transit operations. An observer shall be on duty for watches of 6 hours on, and 6 hours off duty, for a total not to exceed 12 hours of observation duty daily. Observers shall not be allowed to perform more than 5 consecutive days without 2 consecutive days of non-duty. The Endangered Species Observer shall monitor vessel operations to ensure the Endangered Species Act 500-yard

approach regulations for right whales and a minimum 100-yard approach for other listed species is complied with during vessel transit. Sufficient time as approved by the Contracting Officer must be allotted between each loading cycle to allow the Endangered Species Observer to inspect and clean the draghead, thoroughly clean the screening devices, and document and record findings of inspections on Endangered Species Observer Forms and Incident Reports.

3.6.3 Endangered Species Observer Forms, Incident Reports, and Weekly/Final Reports

The Contractor shall prepare and submit a Weekly Report listing all Endangered Species Observer Forms and Incident Reports prepared by the Endangered Species Observer in the covered period to the National Marine Fisheries Service, Northeast Regional Office, Protected Resources Division (attention: Mary Colligan), One Blackburn Drive, Gloucester, Massachusetts 01930. The Contractor shall include copies of all load observation sheets, record of findings for inspections of draghead and screening devices, and any other data compiled by the Endangered Species Observer in preparing the Endangered Species Observer Forms and Incident Reports during the covered period. This Weekly Report shall be signed and dated by the Endangered Species Observer when complete, with a copy of the report and a documented postal receipt verifying report as sent within seven calendar days of the conclusion of the covered period provided to the Contracting Officer. The Endangered Species Observer Forms and Incident Reports shall be in the National Marine Fisheries Service format to be provided by the Contracting Officer.

- a. The Endangered Species Observer shall complete an Endangered Species Observer Form for each loading cycle, whether listed species are present or not, and when live whales and turtles are observed during vessel transit. All forms completed by an Endangered Species Observer during his 6 hour duty shall be listed on the Endangered Species Observer Form and submitted to the Contractor at the end of his 6 hour duty. At the same time, a copy shall be provided to the Contracting Officer. The Contractor shall record time of receipt of the Endangered Species Observer Form and all associated data in his Daily Report of Operations.

- b. The Endangered Species Observer shall complete an Incident Report when dead whales, turtles, or turtle parts are discovered in the borrow areas; when live turtles, dead whole turtles, or turtle parts are taken incidental to the borrow removal work; or if any live turtle or whale is struck or otherwise contacted by any Contractor vessel or movement of his plant. The Contractor shall immediately stop movement of the plant or vessel upon discovery of contact and notify the Endangered Species Observer. The Contractor shall take all measures and actions as may be directed by the Endangered Species Observer to search for and verify condition of the turtle or whale encountered, and when injured or killed, recover the encountered turtle or whale. If dead whales, turtles, or turtle parts are taken incidental to the work and discovered on the draghead or in the screening devices by the Endangered Species Observer, the location of discovery and remains shall be photographed and nature of the findings fully described in an Incident Report. Disposal of remains shall be as specified below in paragraph "Endangered Species Disposition". The Contractor is informed the U.S. Fish and Wildlife Service requirements for this contract limits Incident Reports allowed for Kemp's Ridley Sea Turtles to one and other Sea Turtles to four.

The Contractor shall complete and submit a Final Report for the entire work listing all Endangered Species Observer Forms and Incident Reports prepared by the Endangered Species Observer during the entire contract period to the National Marine Fisheries Service, Northeast Regional Office, Protected Resources Division, One Blackburn Drive, Gloucester, Massachusetts 01930. This Final Report shall be signed and dated by the Endangered Species Observer when complete, with a copy of the report and a documented postal receipt verifying report as sent within twenty calendar days of the conclusion of dredging provided to the Contracting Officer.

3.6.4 Hopper Dredge Special Recording Requirements

All hopper dredges shall be equipped with recording devices for each drag head that capture real time, drag head elevation,

slurry density, and at least two of the following for each respective pump: pump slurry velocity measured at the output side, pump vacuum, or pump RPM. The Contractor shall record continuous real time positioning of the dredge, by plot or electronic means, during the entire dredging cycle including dredging area and disposal area. The recording system shall be capable of capturing data at variable intervals but with a frequency of not less than every 60 seconds. All data shall be time correlated to a 24 hour clock and the recording system shall include a method of daily evaluation of the data collected. Data shall be furnished to the Contracting Officer for each day's operation on a daily basis. A written plan of the method the Contractor intends to use in order to satisfy these requirements shall be included with the Contractor's Quality Control Plan.

3.6.5 Endangered Species Disposition

After completing an Incident Report, the Endangered Species Observer shall notify Mary Colligan, telephone (978) 281-9116, at the National Marine Fisheries Service within 24 hours of the incident. The Endangered Species Observer identifying any dead turtle to be a Kemp's Ridley Sea Turtle shall photograph and place the remains in plastic bags, labeled to show the contract title and location, time, date, specific location taken, load number, and placed in cold storage. In addition, the remains of these turtles shall be labeled to indicate if the remains appear to be recent or old, based on fresh blood, odor, and length of time estimated to have been dead in water at the time when they were discovered. Final disposition of these turtles will be as directed by the National Marine Fisheries Service. Any other dead sea turtles or turtle parts taken incidental to the work shall be photographed by an Endangered Species Observer, and disposed overboard in the channel borrow area as directed by the National Marine Fisheries. Live sea turtles taken incidental to the work shall be photographed and examined by the Endangered Species Observer for injury. Live sea turtles determined by the Endangered Species Observer to be uninjured shall be measured for size and weight, and released by the Endangered Species Observer in a manner as directed by the National Marine Fisheries Service. Turtles determined to be injured shall be maintained and attended on-board the vessel as directed by the Endangered Species Observer until transported to the National Aquarium in Baltimore, Maryland, or other disposition as may be directed by the National Marine Fisheries Service. All findings and determinations of live turtles by the Endangered Species

Observer shall be recorded on the Incident Report and Endangered Species Observer Form.

3.6.6 Hopper Dredge Endangered Species Special Equipment

The Contractor shall submit drawings and operational specifications of all proposed endangered species drag head deflectors, special screening, and lighting equipment for the review and approval of the Contracting Officer. The Contractor shall provide the following special equipment on all hopper dredges used on this work when surface water temperatures exceed 11 degrees Celsius and from 1 April through November 30:

a. Drag Heads Deflectors

All hopper dredge drag heads shall be equipped with rigid sea turtle deflectors that are rigidly attached. Dredging shall not be performed without a turtle deflector device that has been approved by the Contracting Officer. The turtle deflector device shall be maintained in operational condition for the entire dredging operation.

(1) Deflector Design

The leading vee-shaped portion of the deflector shall have an included angle of less than 90 degrees. Internal reinforcement shall be installed in the deflector to prevent structural failure of the device. The leading edge of the deflector shall be designed to have a plowing effect of at least 6 inch depth when the drag head is being operated. Appropriate instrumentation or indicator shall be used and kept in proper calibration to insure the critical "approach angle". If adjustable depth deflectors are installed, they shall be rigidly attached to the drag head using either a hinged aft attachment point or an aft trunnion attachment point in association with an adjustable pin front attachment point or cable front attachment point with a stop set to obtain the 6 inch plowing effect. This arrangement allows fine-tuning the 6 inch plowing effect for varying depths. After the deflector is properly adjusted there shall be NO openings between the deflector and the drag head that are more than 4 inch by 4 inch.

(2) Screening Equipment

The Contractor shall install baskets or screening over each respective hopper inflow with no greater than 4 inch x 4 inch

openings. The method selected shall depend on the construction of the dredge used and shall be approved by the Contracting Officer prior to commencement of dredging. The screening shall provide 100% screening of the hopper inflow. The screens and baskets shall be maintained in operational condition and shall remain in place throughout the performance of the work.

(3) Lighting Equipment

The areas where screens or gratings are installed shall be provided with suitable lighting to allow safe observations of the screen devices during periods of darkness or reduced visibility and shall be approved by the Contracting Officer. Safe access shall be provided to the inflow baskets or screens to allow the observer to inspect for turtles, turtle parts or damage.

3.6.7 Hopper Dredge Special Operating Procedures

The Contractor shall operate the hopper dredge to minimize the possibility of taking sea turtles. When initiating dredging, suction through the dragheads shall be allowed just long enough to prime the pumps, then the dragheads must be placed firmly on the bottom. When lifting the dragheads from the bottom, suction through the dragheads shall be allowed just long enough to clear the lines, and then must cease. Pumping water through the dragheads shall cease while maneuvering or during travel to and from the beach fill or Dam Neck Placement Site. During turning operations, the pumps shall either be shut off or reduced in speed to the point where no suction velocity or vacuum exists. The Contractor shall not raise the drag head off the bottom to increase suction velocities. The primary adjustment for providing additional mixing water to the suction line shall be through water ports. To ensure that suction velocities do not drop below appropriate levels, the Contractor's personnel shall monitor production meters throughout the loading cycle and adjust primarily the number and opening sizes of water ports. Water port openings on top of the drag head, or on raised stand pipes above the drag head, shall be screened before they are utilized on the dredging project. If a dredge section includes sandy shoals on one end of a tract line and mud sediments on the other end of the tract line, the Contractor shall adjust the equipment to eliminate drag head pick-ups to clear the suction line.

-- End of Section --

SECTION 01451

CONTRACTOR QUALITY CONTROL

2/01

PART 1 GENERAL

1.1 GENERAL REQUIREMENTS

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause titled "Inspection of Construction". The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Contracting Officer for non-compliance with quality requirements specified in the contract. The project superintendent in this context shall mean the individual with the responsibility for the overall management of the project including quality and production.

1.1.1 Applicable Publications

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 3740 (1996) Minimum Requirements for Agencies
Engaged in the Testing and/or Inspection
of Soil and Rock as Used in Engineering
Design and Construction

ASTM E 329 (1995b) Agencies Engaged in the Testing
and/or Inspection of Materials Used in
Construction

1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all costs associated

therewith shall be included in the applicable unit prices or lump-sum prices contained in the Bidding Schedule.

1.3 COORDINATION MEETING

As soon as practicable after receipt of Notice of Award and before start of the scheduled work, the Contractor shall meet with the Contracting Officer's Representative (COR) in coordination with the requirements of SECTION 01200 and discuss the Contractor's Quality Control (CQC) system. The Contractor's Project Manager, Submittals Clerk and Quality Control Manager, Dredge Captain and Plant Operators, and the independent Surveyor or Engineer to be employed by the Contractor to perform all surveys, layout of the work and volume computations required of the Contractor shall attend this meeting. The Contractor is encouraged to have an officer of his company and representation from any major subcontractors at the conference. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the (CQC) operations, control activities, testing, administration of the system for both onsite and offsite, and the interrelationship of Contractor and Government control and surveillance. Minutes of the meeting will be taken and prepared by the Government, signed by both the Contractor and the COR, with signed copy provided to Contractor, which shall become a part of the contract file. There may also be occasions when subsequent conferences will be called to reconfirm understandings.

1.4 QUALITY CONTROL PLAN

1.4.1 General

Prior to start of the scheduled work operations, the Contractor shall furnish his CQC plan to the COR for acceptance. The CQC Plan the Contractor proposes to implement shall identify the personnel, procedures, instructions, records, and forms, and, as a minimum, shall include:

a. A description of the quality control organization, including a chart showing lines of authority by name with duties and responsibilities of their respective position, qualifications (in resume format), and acknowledgment that the CQC staff shall implement the three phase control system for all aspects of the work specified.

b. The number, classifications, qualifications, duties, responsibilities and authorities of personnel. A copy of the

letter, signed by an authorized official of the firm, which describes the responsibilities and delegates the sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities and responsibilities, and shall furnish copies to the Government at the same time.

c. Control, verification and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person or laboratory responsible for each test (laboratory facilities will be approved by the CO).

d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agents. These procedures shall be in accordance with Section 01330 SUBMITTAL PROCEDURES.

e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities will be approved by the Contracting Officer.)

f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.

g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures shall establish verification that identified deficiencies have been corrected.

h. Reporting procedures, including proposed reporting formats.

i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one

definable feature under a particular section. This list will be agreed upon during the coordination meeting.

1.4.2 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. The Government reserves the right to require the Contractor to make changes in his CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

1.4.3 Notification of Changes

After approval of the CQC plan, the Contractor shall notify the COR in writing of any proposed change to his CQC System.

1.4.4 Corrective Actions

If at any time the Government determines that the CQC system, personnel, instructions, controls, tests, or records are not providing scheduled work which conforms to contract requirements, action shall be taken by the Contractor to correct the deficient management.

1.5 QUALITY CONTROL ORGANIZATION

1.5.1 CQC Organizational Staffing

The Contractor shall provide a CQC organization staff which shall have complete authority to take any action necessary to ensure compliance with the contract. The CQC organization staff shall consist of a CQC system manager and supplemental staff as specified below, who shall answer to the Contractor's Project Manager. The Project Manager (who shall not be the project superintendent) shall be an executive member of the Contractor's organizational staff, and shall have supervisory powers over the CQC organization and the project superintendent. Following are the minimum requirements for the CQC organization staff. These minimum requirements will not necessarily assure an adequate staff to meet the CQC requirements at all times during dredging and dredged material placement operations. The actual strength of the CQC staff may vary during any specific period to cover the needs of the work.

1.5.1.1 CQC System Manager

The Contractor shall identify an individual within his organization who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager shall:

a. be an experienced construction management person with a minimum of five years experience in dredging and related beach fill work. This experience shall include successful completion of Course entitled "Construction Quality Management for Contractors". The Contractor shall complete this training within 30 calendar days of receipt of his Notice To Proceed. This course is offered periodically by the Corps of Engineers at an administrative cost not to exceed \$50.00 per person. Specific times and locations are available from the Norfolk District, Construction Operations Section, telephone (757) 441-7687.

b. be on the job site at all times during work operations and shall be employed by the Contractor.

c. be assigned as system manager but may have duties as the Project Superintendent in addition to quality control.

d. have an alternate who shall be identified in the plan to serve in the event of the CQC system manager's absence. CQC System Manager's period of absence may not exceed one week at any one time, and not more than fifteen workdays during a calendar year. The requirements for the alternate shall be the same as for the designated CQC System Manager.

1.5.1.2 CQC Supplemental Staff Personnel

When necessary for a proper CQC organization, the Contractor shall add additional staff at no cost to the Government. The staff shall be of sufficient size to ensure adequate QC coverage of all work phases, work shifts, and work crews involved in the dredging operations. These individuals shall:

a. be employed by the Contractor, unless waived in writing by the Contracting Officer (CO). All CQC staff members shall be subject to interview prior to acceptance by the Contracting Officer.

b. assist and be responsible only to the CQC system manager. These personnel may perform other duties, but shall be

fully qualified by experience and technical training to perform their assigned QC responsibilities and must be allowed sufficient time to carry out these responsibilities.

c. be physically present at the scheduled work site during work on their areas of responsibility.

d. have the necessary education and experience to ensure contract compliance and shall be responsible for assuring the Contractor's work complies with the contract requirements for their area of specialization.

1.5.2 Organizational Changes

The Contractor shall obtain the Contracting Officer's acceptance before replacing any member of the CQC staff. Requests shall include the names, qualifications, duties, and responsibilities of each proposed replacement.

1.6 SUBMITTALS

Submittals shall be accomplished as specified in Section 01330 SUBMITTAL PROCEDURES and as may be required in the respective specifications. The CQC Manager shall be responsible for certifying that all submittals are in compliance with the contract requirements.

1.7 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, including that of subcontractors and suppliers, complies with the requirements of the contract. The controls shall be adequate to cover all construction operations, including both on-site and off-site fabrication, mobilization and demobilization of the Contractor's plant, sitework and related operations, plant operations in conjunction with environmental monitoring and testing, and will be keyed to the proposed construction sequence. The controls shall be subject to the approval of the Contracting Officer and include at least three phases of control to be conducted by the CQC system manager for all definable features of work as follows:

1.7.1 Preparatory Phase

This phase shall be initiated after the Pre-Construction Conference, performed prior to beginning work on each definable feature of work, and shall include as a minimum the following:

- a. A review of each paragraph of applicable specifications.
- b. A review of the contract plans.
- c. A check to assure that all plant and equipment to be employed in the work has been tested, required documentation has been submitted, and their use on the work has been approved as specified.
- d. A check to assure that provisions have been made to provide required control inspection and testing.
- e. Examination of the respective work areas to assure that all required preliminary work has been completed and is in compliance with the contract.
- f. A physical examination of approved equipment and plant to do the scheduled work is on hand and conforms to job requirements. A verification check to assure each item of plant and equipment is properly manned for the scheduled work.
- g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for constructing the work, including repetitive deficiencies, and document construction tolerances and workmanship standards for each respective phase of work.
- i. A check to ensure that the portion of the plan and operations method for the work to be performed has been accepted by the Contracting Officer.
- j. The Government shall be notified at least forty-eight hours in advance of beginning any of the required action of the preparatory phase. The CQC system manager shall certify the requirements of this phase to be in accordance with contract requirements as a part of this notification. The results of the preparatory phase actions shall be documented by separate written minutes prepared by the CQC system manager and attached to the daily QC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

1.7.2 Initial Phase

This phase shall be accomplished at the beginning of each definable feature of work. The following shall be accomplished:

a. A check of preliminary work to ensure that it is in compliance with contract requirements. Review minutes of the preparatory phase.

b. Verification of full contract compliance. Verify required control inspection and testing.

c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards.

d. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.

e. The Government shall be notified at least forty-eight hours in advance of beginning any of the required action of the initial phase. The CQC system manager shall certify the requirements of this phase to be in accordance with contract requirements as a part of this notification. The results of the initial phase actions shall be documented by separate written minutes prepared by the CQC system manager and attached to the daily QC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications. Exact location of initial phase inspections and verifications shall be indicated for future reference and comparison with follow-up phases.

f. The initial phase shall be repeated for each new crew to work on-site, when changes to approved plans or schedules are required, and any time acceptable specified quality standards are not being met.

1.7.3 Follow-up Phase

Daily checks shall be performed to assure continuing compliance with contract requirements, including control testing, until completion of the particular feature of work is accomplished. The checks shall be made a matter of record in the Daily CQC Report documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work which may be affected by any preceding deficient work. The Contractor shall not build upon or conceal non-conforming work.

1.7.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases shall be conducted by the Contractor on the same definable features of work when directed by the COR.

1.8 TESTS

1.8.1 Testing Procedures

The Contractor shall perform tests specified or required to verify that control measures are adequate to provide a product which conforms to contract requirements. The Contractor shall procure the services of an industry recognized testing laboratory or he may establish an approved testing laboratory at the project site. A list of tests which the Contractor understands he is to perform shall be furnished to the Contracting Officer. The list shall give the test name, specification paragraph containing the test requirements, and the personnel and laboratory responsible for each type of test. The Contractor shall perform the following activities and record and provide the following data:

(a) Verify that testing procedures comply with contract requirements.

(b) Verify that facilities and testing equipment are available and comply with testing standards.

(c) Check test instrument calibration data against certified standards.

(d) Verify that recording forms, including all of the test documentation requirements, have been prepared.

(e) Results of all tests taken, both passing and failing tests, shall be recorded on the Quality Control report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test shall be given. Actual test reports may be submitted later, if approved by the Contracting Officer, with a reference to the test number and date taken. An information copy of tests performed by an off-site or commercial test facility shall be provided directly to the Contracting Officer. Failure to submit timely test reports, as stated, may result in nonpayment for related work performed and disapproval of the test facility for this contract.

1.8.2 Testing Laboratories

1.8.2.1 Capability Check

The Government reserves the right to check laboratory equipment in the proposed laboratory for compliance with the standards set forth in the contract specifications and to check the laboratory technician's testing procedures and techniques. Laboratories utilized for testing soils shall meet criteria detailed in \-ASTM D 3740-\ and \-ASTM E 329-\\.

1.8.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed a charge, equal to the cost of each recheck, to reimburse the Government for each succeeding recheck of the laboratory or the checking of a subsequently selected laboratory. Such costs will be deducted from the contract amount due the Contractor.

1.8.2.3 On-Site Laboratory

The Government reserves the right to utilize the Contractor's control testing laboratory and equipment to make assurance tests and to check the Contractor's testing procedures, techniques, and test results at no additional cost to the Government.

1.8.2.4 Transportation of Samples for Testing

Cost incidental to the transportation of samples or materials shall be borne by the Contractor. Samples of materials for test verification and acceptance testing by the Government shall be delivered to the Corps of Engineers Division Laboratory or other place designated, as directed by the COR.

1.9 DOCUMENTATION

1.9.1 Current Quality Control Records

The Contractor shall maintain current records of quality control operations, activities, and tests performed, including the work of subcontractors and suppliers. These records shall be on an acceptable form, complete, legibly written or typed, and shall include factual evidence that required quality control activities and tests have been performed, including but not limited to the following:

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed today, giving location, description, and by whom.
- d. Test and control activities performed with results and references to specifications/plan requirements. List deficiencies noted along with corrective action.
- e. Identify submittals reviewed, with contract reference, by whom, and action taken.
- f. Off-site surveillance activities, including actions taken.
- g. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- h. List instructions given/received and conflicts in plans and/or specifications.
- i. Contractor's verification statement.
- j. These records shall indicate a description of trades/workmen working on the project, the number of personnel working, weather conditions encountered, and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment utilized in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the COR daily within twenty-four hours after the date(s) covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every seven days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC system manager. The report from the CQC system manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

1.9.2 Deficiency Tracking Log

The Contractor shall establish and maintain a daily formal deficiency tracking log that shall be kept at the job site. The log shall include as a minimum the following:

- a. Contract title and number.
- b. Deficient work (by an identification number).
- c. Description of corrective action(s).
- d. Date reported.
- e. Date corrected.
- f. Reported by.

1.10 NOTIFICATION OF NONCOMPLIANCE

The COR will notify the Contractor of any noncompliance with the foregoing requirements. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose of notification and be recorded in the Daily Report of Operations. If the Contractor fails or refuses to comply promptly, the COR may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

1.11 MEASUREMENT AND PAYMENT

Separate payment will not be made for any work performed under this section and all associated costs shall be included in the cost for all bid items.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

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SECTION 01500

TEMPORARY CONSTRUCTION FACILITIES

2/01

PART 1

1.1 GENERAL REQUIREMENTS

The temporary office space, material and equipment storage areas, and employee staging areas for the use of the Contractor shall be obtained by and at a location and expense of the Contractor; however, the staging area utilized by the Contractor shall be in close proximity of the scheduled work area and must be protected for the duration of the contract by a gated, 6-foot construction fence approved by the Contracting Officer.

1.1.1 City of Virginia Beach Owned Staging Space

Prior to starting the work, the Contractor may submit a written request to the Contracting Officer to have an area owned by the City of Virginia Beach at 31st Street that will be available for the Contractor's use as a staging area. The Contractor shall prepare a site plan indicating the proposed location and dimensions of any portion of this area to be used by the Contractor, the type of facilities to be used, avenues of ingress and egress the Contractor proposes to use at the area, and details of fencing and other site alterations the Contractor is required or proposes to make at the site. The expense of providing any facilities, alterations, and utilities at the site shall be the responsibility of the Contractor. The actual location of Contractor facilities, alterations, and utilities the Contractor may wish to utilize at this area are subject to the approval of the Contracting Officer and must be removed in their entirety and the site restored to original condition at the Contractor's expense upon completion of the contract.

1.1.2 City of Virginia Beach Provided Office Space

Prior to starting the work, the Contractor may submit a written request to the Contracting Officer to have an office space provided by the City of Virginia Beach at 3007 Pacific Avenue, Virginia Beach, Virginia. The City of Virginia Beach will provide this office space for the Contractor's use during the contract; however, all costs for utilities and upgrades shall be at the Contractor's expense.

1.2 AVAILABILITY AND USE OF UTILITY SERVICES

The Contractor is informed that utility and water services are not available in the beach fill area. Utilities and water services proposed for use in the work area shall be obtained by the Contractor at his expense and must be approved for use in the work area by the Contracting Officer.

1.3 BULLETIN BOARD, PROJECT SIGN, AND PROJECT SAFETY SIGN

1.3.1 Bulletin Board

Prior to commencing any beach fill placement operations, the Contractor shall provide a weatherproof bulletin board not less than 36 by 48 inches in size for displaying the Equal Employment Opportunity poster, a copy of the wage decision contained in the contract documents, Wage Rate Information poster, and other information as may be required by the Contracting Officer. The bulletin board shall be located at the Contractor staging area in a conspicuous place, easily accessible to all employees, as approved by the Contracting Officer. Legible copies of the data required as specified shall be displayed until work under this contract is completed. Upon completion of work the bulletin board shall be removed by and at the expense of the Contractor.

1.3.2 Project and Safety Signs

The requirements for the information to be displayed on the signs, sign content format, and location where signs are to be installed shall be as designated on the sample sign pages included at the end of this Section and approved by the Contracting Officer. The signs shall be erected prior to commencement of any work on the site. The lettering provided on the signs shall be printed graphics of light colored metallic or non-metallic numerals and letters that are reflective. Safety Sign content shall be updated with corrections daily. Upon completion of the project, the signs shall be removed by and at the expense of the Contractor.

1.3.3 Sign Erection Requirements

All signs shall be erected in accordance with the requirements as indicated on Attachment No. 3 that is included at the end of this section.

1.3.4 Payment

All costs for providing and maintaining the signs as indicated and specified shall be borne by the Contractor.

1.4 PROTECTION AND MAINTENANCE OF TRAFFIC

During construction, the Contractor shall provide access and temporary relocated roads as may be necessary to maintain vehicular traffic and protect the public. Measures for the protection and diversion of traffic, including the provision of watchmen and flagmen, erection of barricades, placing of lights around and in front of equipment and the work, and the erection and maintenance of adequate warning, danger, and direction signs, shall be in accordance with the laws and regulations governing the respective activity. In the event of a conflict between laws and jurisdictions governing the work, the most stringent shall prevail. The Contractor's traffic on roads selected for hauling material to and from the site shall interfere as little as possible with public vehicular and pedestrian traffic.

1.5 CONTRACTOR STORAGE AND STAGING AREAS

The Contractor shall be responsible for the security and safe storage of any materials or equipment stored by him for his use. Trailers utilized by the Contractor, whether for the purpose of administrative use or materials storage, shall present a clean and neat exterior appearance and be maintained in a state of good repair. Any item of construction equipment, with the exception of hand tools, which becomes inoperable shall be repaired within five working days or removed from the construction site.

1.6 CLEANUP

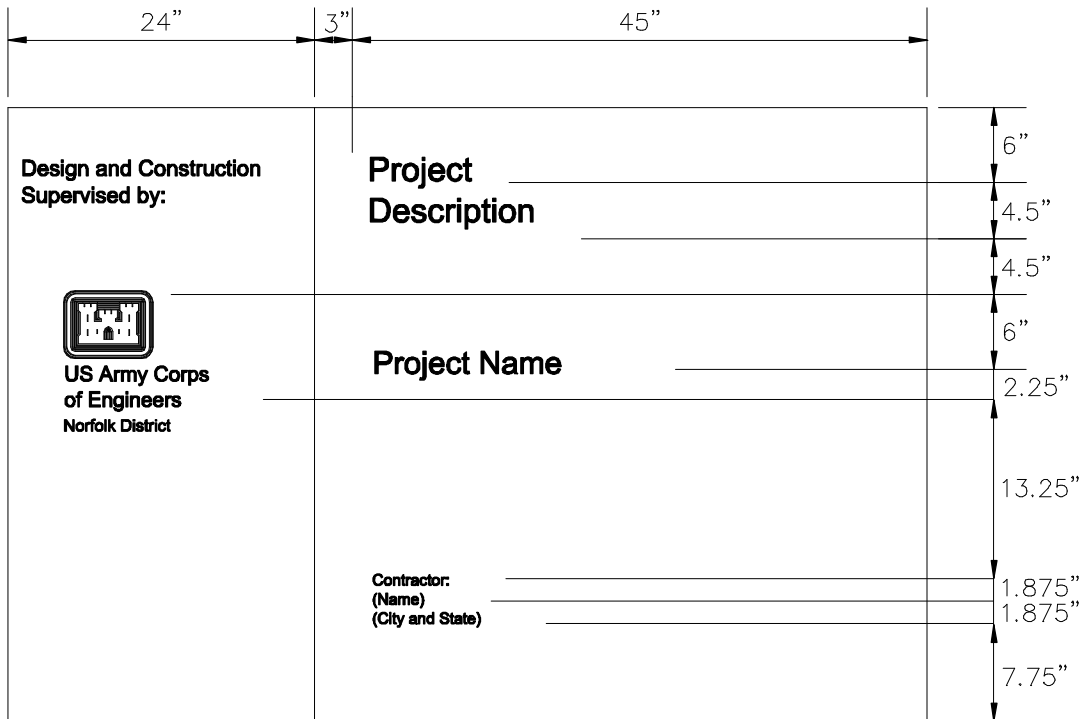
Construction debris, waste materials, packaging material and the like shall be placed in approved trash receptacles and removed from the work site daily.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

PROJECT SIGN

The graphic format for this 4'x6' sign panel follows the legend guidelines and layout as specified below. The large 4'x4' section of the panel on the right is to white with black legend. A 2'x4' decal provided by the Corps shall be placed on the left side of the sign panel.



Project Description:

One to three line project title legend describes the work being done under this contract.

Color: Black; Typeface: 3" Helvetica Bold; Maximum line length: 42"

Project Name:

One to three line identification of project or facility.

Color: Black; Typeface 1.5" Helvetica Bold; Maximum line length: 42"

Cross-align the first line of PROJECT NAME with the first line of the Corps Signature as shown.

Contractor:

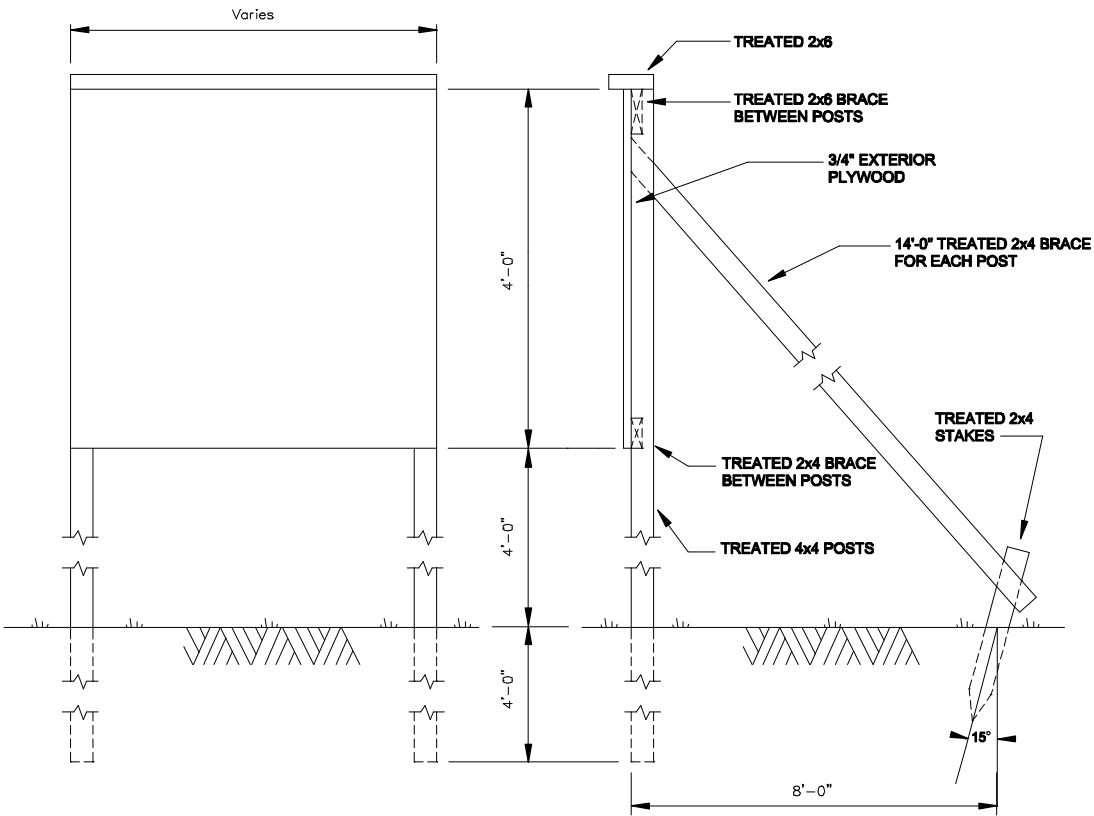
One to five line identification of prime contractors including: type (architect, general contractor, etc.), corporate or firm name, city, state.

Color: Black; Typeface: 1.25" Helvetica Bold; Maximum line length: 21"

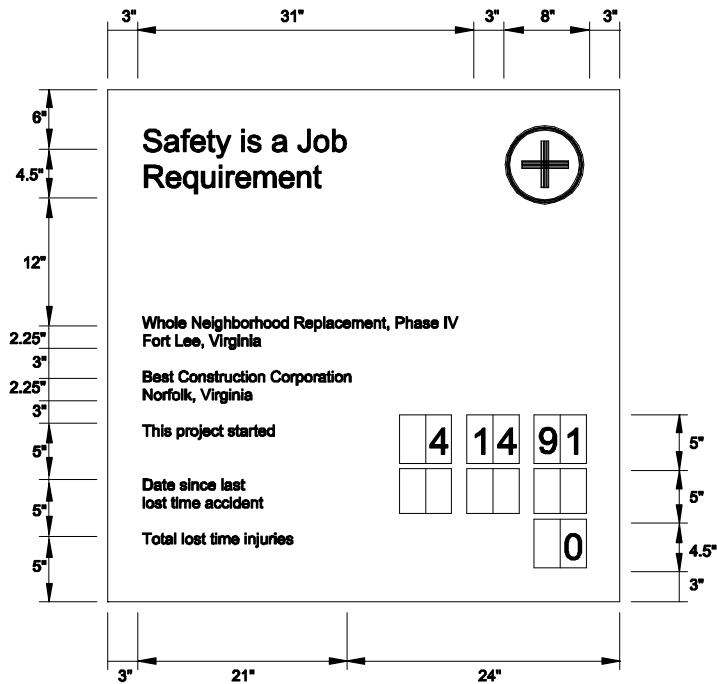
All typography is flush left and ragged right, upper and lower case with initial capitals only as shown.

Letter and word spacing to follow Corps Standards (EP 310-1-6a and 6b).

SIGN ERECTION DETAILS



SAFETY SIGN



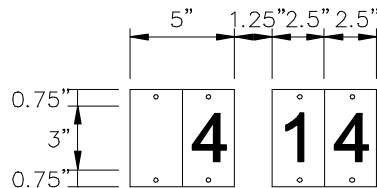
All typography is flush left and rag right, upper and lower case with initial capitals only as shown. Letter and word spacing to follow Corps Standards (EP 310-1-6a and 6b).

Legend Group 1: Standard two-line title "Safety is a Job Requirement" with (8" od.) Safety Green First Aid logo. Typeface: 3" Helvetiva Bold; Color: Black.

Legend Group 2: One to two-line project title legend describes the work being done under this contract and name of host project. Typeface: 1.5" Helvetica Regular; Color: Black; Maximum line length: 42".

Legend Group 3: One to two-line identification: name of prime contractor and city, state address. Typeface: 1.5" Helvetica Regular; Color: Black; Maximum line length: 42".

Legend Group 4: Standard safety record captions as shown. Typeface 1.25" Helvetica Regular; Color: Black.



Replaceable numbers are to be mounted on white 0.060 aluminum plates and screw-mounted to backdrop. Typeface: 3" Helvetica Regular; Color: Black; Plate size: 2.5"x 4.5".

SECTION 01850

DRAWING INDEX

The following drawings are included as a part to this Solicitation

Norfolk
District
File No.

Title

H-10-13-09 (in 10 sheets)	BEACH EROSION CONTROL AND HURRICANE PROTECTION PROJECT - BORROW PLAN (ATLANTIC OCEAN CHANNEL)
H-31-10-111 (in 6 sheets)	BEACH EROSION CONTROL AND HURRICANE PROTECTION PROJECT - BORROW PLAN (THIMBLE SHOAL CHANNEL)
H-31-10-110 (in 1 sheet)	BEACH EROSION CONTROL AND HURRICANE PROTECTION PROJECT - UNSATISFACTORY BEACH FILL MATERIAL DISPOSAL PLAN (DAM NECK DREDGED MATERIAL PLACEMENT AREA)
SHEET 1	BEACH EROSION CONTROL AND HURRICANE PROTECTION PROJECT - SAND PLACEMENT PLAN
SHEET 2	BEACH EROSION CONTROL AND HURRICANE PROTECTION PROJECT - SAND PLACEMENT DETAILS

SECTION 02881

DREDGING

2/01

PART 1 GENERAL

1.1 PLANT

Plant and equipment employed on the dredging work shall be in satisfactory operating condition, capable of safely and efficiently performing the work as indicated or specified, and shall be subject to inspection and approval by the government at all times. Equipment and machinery, including pump out buoys, pipelines and supporting plant, and equipment associated with near beach operations, shall be subject to inspection and approval by the government and kept in good condition at all times. A complete listing of all dredging and near beach plant and machinery to be used in the work, including dredges, pump out buoys, skiffs, barges, and other related equipment, shall be submitted. The listing shall include year and manufacturer, operational capacities, safety features, operating and licensing requirements for operators, and a description where and how the item of equipment or plant will be employed in the work. Any leaks or deficiencies shall be promptly and properly repaired. No reduction in the capacity of the plant, once inspected and approved by the government to be sufficient for employment on the work, shall be made except by written permission of the Contracting Officer. The measure of the "capacity of Plant" shall be its actual performance on the work to which these specifications apply. All floating plant and pipelines used as accessways or working platforms shall be equipped with walkways and guardrails conforming to Corps of Engineers Manual EM 385-1-1 and meet OSHA requirements for worker safety. All buoyant (plastic) dredge pipelines that are used on this contract shall be weighted or anchored securely to the bottom so that the pipeline will stay on the bottom, and marked with floats or buoys during daylight and amber lights during darkness to mark distinctly the entire length and course of the line.

1.2 CHARACTER OF MATERIALS

The borrow material in Thimble Shoal Channel is in areas where the material to be dredged is predominantly from shoaling

since the channel was last dredged and areas where material has not been dredged previously. The material to be removed from the Atlantic Ocean Channel has never been dredged. Bidders are expected to examine the sites of work and decide for themselves the character of the materials.

1.2.1 Obstruction Identification

The Contractor may encounter obstructions or other debris that is not identified and may pose a hazard to navigation. The Contractor shall advise the Contracting Officer immediately of any obstructions or other debris of this nature that is encountered.

1.3 HOPPER DREDGE REQUIREMENTS

1.3.1 Position Measurement, Plotting and Recording

Each dredge or vessel used for transport of dredged material to the beach fill placement area shall be equipped with necessary equipment, including shore stations if required, to produce a computer-generated graphic plot to an appropriate scale of the vessel's geographic position at all times the vessel is working under the contract. Limits of dredging areas shall be shown on each plot. The date and time shall be printed automatically on the plot at close enough intervals to interpolate the dredge's position at any time. Travel between the dredging and placement areas may be shown to a different scale or in a different mode than in the dredging areas. The type of operation (pumping, travel, or other) shall be shown. Each load shall be numbered serially and the respective serial number recorded in the Daily Report with time, date, and station number for the beach fill placement section where placed. The Contracting Officer may verify or have the Contractor's personnel verify the automatically-plotted data using normal piloting and navigation methods at any time. Any discrepancies shall be evaluated and corrected at once.

1.3.2 Load Measuring and Recording

Dredged material removed shall be measured and recorded automatically by the weight of dredged material in the bin, based on vessel displacement. If the measurement equipment includes a capability for automatic conversion from weight measurement to volume measure, the conversion factors, method, and meters or other devices shall be subject to approval of

the Contracting Officer. The Contracting Officer may perform bin surveys for comparison with the load meter measurements furnished by the Contractor.

1.3.3 Temporary Malfunctions

1.3.3.1 Vessel and Equipment Malfunctions

Should the vessel displacement load measurement, or position plotting equipment become inoperable, the Contracting Officer will require the Contractor to perform direct measurement of volume of dredged material in the bin and plotting of position. The direct bin measurement will be accomplished by using staff gauges and other sounding poles and lines which are acceptable to the Contracting Officer so that the average depth of solid material in the bins can be determined. Position plotting and sounding shall be by normal piloting and navigation procedures. A certified table showing the volumes in cubic yards verses the average depths of material for each 0.1 foot of depth in each bin will be provided by the Contractor. The volumes of material in cubic yards determined by direct bin measurement from bin calibration tables shall be reported in lieu of the displacement load measurement. During the use of this method of measurement, it shall be assumed that a cubic yard of solid material in the hopper is equivalent to a cubic yard of insitu material on the bottom of the cut.

a. If the machinery or equipment is inoperable for more than 5 calendar days, the Contracting Officer may at his sole option assign additional inspection and quality assurance personnel to the work. If so, the Contractor shall be liable for extra inspection and QA costs of \$400.00 per day which will be deducted from his earnings under the contract.

1.4 Beach Fill Materials

Dredging from the channel borrow areas shall be accomplished so that only satisfactory beach fill material as specified in Section 02882 BEACH FILL is placed on the beach. The presence of satisfactory material shall be indicated by subsurface soils data, inspection of material in the hopper, visual inspection of discharged material on the beach, and subsequent laboratory test results if necessary. Inspections and tests

for discovery of satisfactory material for beach fill shall be the responsibility of the Contractor. Should during any loading cycle the Contractor encounter unsatisfactory materials for beach fill within the designated channel borrow area, the Contractor shall record in his Daily Report the location of the unsatisfactory beach fill material and move borrow operations to another location within the designated channel borrow areas. Should unsatisfactory material be discovered in the hopper prior to placement operations, the Contractor shall dispose of the unsatisfactory material for beach fill in the Dam Neck Dredged Material Placement Area. Should unsatisfactory beach fill material be discovered during beach fill placement operations, placement operations shall immediately be stopped and the remainder of the unsatisfactory material for beach fill disposed by the Contractor in the Dam Neck Dredged Material Placement Area. The Contracting Officer will determine the corrective measures and final disposition of unsatisfactory material placed in the beach fill area. All costs for disposal of unsatisfactory beach fill materials in the Dam Neck Dredged Material Placement Area and any corrective actions directed by the Contracting Officer for unsatisfactory material placed in the beach fill shall be borne by the Contractor.

1.4.1 Satisfactory Materials

Materials classified in accordance with ASTM D 2487 as SW, SP, and SP-SM containing not more than 10 percent fines passing a U.S. Standard Sieve No. 200 are satisfactory for beach fill. Material placed on the beach meeting these requirements shall be considered as satisfactory.

1.4.2 Unsatisfactory Materials

Materials which do not comply with the requirements for satisfactory materials are unsatisfactory. Materials classified in accordance with ASTM D 2487 as SP-SM with greater than 10 percent fines, SM, SC, CL, CH, ML, MH, OL, OH, Pt, GP, GW, GM, and GC are unsatisfactory.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION

3.1 TRANSPORT OF MATERIAL DREDGED FROM CHANNEL BORROW AREAS

The Contractor shall transport material dredged from the channel borrow areas to a pump out buoy for deposit by a hydraulic pipeline within the beach fill placement area as indicated. The pump out buoy shall be moored no less than 500 feet seaward from the mean low water line. Dredge pipeline shall be placed on the beach and advanced in a manner as approved by the Contracting Officer.

3.2. HOPPER DREDGE MATERIAL PUMP OUT CONTROLS

3.2.1 General

The Contractor shall provide constant monitoring of the material placement operations. Monitoring personnel shall have fully functional two-way radio communications with the dredge operator at all times when pump out operations are in progress. Frequent communication checks shall be made to assure proper discharge of the hopper and material placement during the pump out operations. In the event of any communications failure or improper material placement is determined, all pump out and placement operations shall be immediately suspended until communications are restored as approved by the Contracting Officer, or in the event of pump out problems or improper material placement, until proper material placement procedures are reestablished by the Contractor as approved by the Contracting Officer.

3.2.2 Warning Signs

The contractor shall erect and maintain at his own expense suitable navigation warning signs at the pump out buoy mooring facility, each end of a submerged pipeline, and at any other points necessary to prevent hazards to navigation.

3.2.3 Examination of Pump Out Buoy and Pipeline

The pump out buoy and pipeline, including connections at the dredge and those used for a submerged line, shall be examined and determined to be in good condition to reasonably expect

them to last throughout the job without wearing to the extent of allowing leaks.

3.2.3.1 Leaks

In the event that leaks occur anywhere during pump out of material from the hopper dredge, the contractor will be required to immediately discontinue using the respective equipment until the leaks are stopped. The contractor shall also be required to recover at no cost to the Government any material improperly placed because of a leak or leaks in the equipment.

3.3 ALLOWED DREDGING DEPTH

The maximum allowable dredging depth within the Atlantic Ocean Channel borrow area is -60 feet MLLW (NOS). Within the Thimble Shoal Channel borrow area, the maximum allowable dredging depth in designated portions of the borrow area is -54 feet MLLW (NOS) and in other designated portions of the borrow area is -58 feet MLLW (NOS). Under no circumstance shall the Contractor dredge below the maximum allowable dredging depth in the respective designated portions of the borrow areas.

3.4 QUALITY CONTROL

The contractor shall establish and maintain a quality control system for all dredging operations to assure compliance with contract requirements and record his inspections and tests under this system.

3.4.1 Inspections and Testing Requirements

Inspections and testing shall be the responsibility of the Contractor including but not limited to the following:

3.4.1.1 Pump Out Buoy Mooring Facility Inspections and Tests

Inspection for adequacy of material control and safety, adequacy and stability of structures, and surveillance for breaks and leaks in connections.

3.4.1.2 Equipment and Machinery Requirements

All measuring equipment, global positioning systems (GPS) and other electronic positioning systems, data plotting and recording equipment, and the procedures associated with each respective item of equipment, shall be subject to the approval of the Contracting Officer. Verification of current calibration for each respective item of equipment, as approved by the Contracting Officer, shall be provided by the Contractor prior to use of the equipment on the work. All records produced by the equipment shall be inspected and certified as complete by the Contractor's Quality Control Representative and included as a part of the Daily Quality Control Report.

3.4.1.3 Miscellaneous Inspections and Test Records

A copy of the records of all inspections and tests, as well as record of corrective action taken, shall be included in the Control Plan and furnished to the Contracting Officer as a part of the Daily Quality Control Report.

3.4.1.4 Inspection and Test Records

A copy of the records of inspections and tests, as well as record of corrective action taken, shall be provided to the Contracting Officer with the Daily Report of Operations.

3.4.1.5 Reporting and Certificates

All measuring, plotting, and recording equipment and procedures shall be subject to the approval of the Contracting Officer. Verification of their calibration, certified by the Contractor's Quality Control Representative, shall be furnished prior to use on the work. All records produced by the equipment shall be authenticated by the authorized representative of the contractor and then provided to the Contracting Officer with the Daily Report of Operations.

3.5 REPORTING REQUIREMENT

The Contractor shall prepare and maintain a Daily Report of Operations and furnish copies daily to the Contracting Officer. A copy of the form prescribed for recording the

required information and any further instructions on the preparation of the report will be furnished at the preconstruction conference noted in Section 01005. The Contractor shall also furnish the following item daily to the Contracting Officer during dredging operations:

- (a) Copy of dredge leverman's log

SECTION 02882

BEACH FILL

2/01

PART 1 GENERAL

1.1 SUBMITTALS

Submit the following in accordance with Section 01330
SUBMITTAL PROCEDURES:

SD-02 Shop Drawings

Pre-Construction and Post-Construction Survey Drawings and
Volume Computations; G

SD-05 Design Data

Beach Fill Placement Records and Survey Data; G

1.2 ORDER OF WORK

Beach fill placement operations shall commence at 12th Street and proceed continuously and orderly to final beach fill completion at 89th Street. The work shall proceed in beach fill placement segments of approximately 500 feet in length and each beach fill placement segment shall be completed and accepted by the Contracting Officer before proceeding to the next beach fill placement segment unless otherwise directed by the Contracting Officer.

1.2 BEACH CONSTRUCTION AND PLACEMENT MEASUREMENT REQUIREMENTS

Measurement of quantity to be placed for pay purposes will be based on pre-construction and post-construction cross sections surveys and volume computations made by an independent professional engineer or surveyor as specified on each beach fill placement segment released to the Contractor for construction. The Contractor shall give written notice to the Contracting Officer a minimum 3 calendar days prior to performing the pre-construction and post-construction surveys. All surveys shall be performed as specified in the presence of the Contracting Officer unless directed otherwise. The results of the surveys and volume computations shall be provided to the Contracting Officer in the format as specified within 24

hours. The Contracting Officer shall utilize the surveys and volume computations to determine the actual quantities of materials to be placed in the respective beach fill placement segment for acceptance. The Government reserves the right to perform Quality Assurance Surveys at the expense of the Government to verify survey results.

1.2.1 Beach Fill Segment Surveys

Pre-construction and post-construction surveys for acceptance shall be taken by an independent professional engineer or surveyor as specified immediately prior to and after fill placement in a respective beach fill placement segment. Pre-construction fill surveys shall be taken within 5 calendar days of fill placement. Surveys will be taken on parallel profile lines (ranges) spaced at a maximum of 100 feet intervals. The minimum stationing interval will be 10 feet or at breaks in slope.

1.2.2 Beach Fill Placement Records and Survey Data

All original field notes, computations, and other records for the purpose of layout of surveys and determining volume of beach fill material placed by the Contractor shall be recorded in duplicating field books, the original pages of which shall be stamped and signed by an independent professional engineer or surveyor as specified and furnished promptly to the Contracting Officer at the site of the work. The Contractor shall furnish the Contracting Officer the profile data compiled and certified by an independent professional engineer or surveyor as specified for each respective survey on a computer disk. The survey data shall be recorded digitally on double-sided high capacity diskettes or cd-rom in an MS-DOS compatible format. The data shall be submitted to the Government in the following files:

- a. ASCII files compatible with the Interactive Survey Reduction Program (ISRP), 2.8 format using distance offset from the baseline (x) and elevation (z).

- b. ASCII files having a descriptive header for each profile line followed by three columns: Easting (x), Northing (y), and Elevation (z).

- c. The Government reserves the right to change and revise requirements for survey data formats as described above at the Preconstruction Conference.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION

3.1 PLACEMENT OF BEACH FILL MATERIAL

3.1.1 General

The beach fill material shall be removed from the channel borrow areas and transported to the shoreline pump out buoy as specified in SECTION 02881 DREDGING. The beach fill material shall be deposited by a hydraulic pipeline in the beach fill placement area segments as indicated and specified.

3.1.2 Beach Fill Placement Area Control

The Contractor shall coordinate with the Contracting Officer to maintain the scheduled work in beach fill placement segments to provide a 500-foot long pre-construction section and a 500-foot long final acceptance section to be surveyed while a 500-foot long construction section is being constructed in between the two sections being surveyed. The work area for surveys shall be a 500-linear-foot section of beach along the fill reference line beginning with the project limit or last acceptance area. The pre-construction (original) sections shall be maintained at a minimum 500 feet ahead of the work area. The Contractor shall request in writing if longer or shorter acceptance sections are requested due to weather or site conditions. The beach fill placement area control points, range markers, and buoys shall be set by an independent professional engineer or surveyor as specified and shall be maintained by him to define the work and to facilitate inspection. The Contractor shall suspend backfill operations when the gages or ranges cannot be seen or followed. Construction staking on the beach shall be placed by an independent professional engineer or surveyor as specified in the immediate work areas only and be 1-inch o.d. steel pipe or other approved material that shall be promptly removed as the work areas are accepted by the Government. Beach fill material shall be placed in a manner to avoid damage to all existing structures. The Contractor shall be solely responsible for any damage caused by him to any wooden walkovers or structures, pavement, curbs, signs, lamps, bulkhead, seawall, concrete ramps, pump stations, outfall pipes, outlet boxes, beach grass, or any other property

adjacent to the beach fill areas. Any damage to such items due to fault or negligence of the Contractor shall be repaired or replaced at his own expense in a manner as approved by the Contracting Officer. The beach fill material shall be controlled and graded to prevent material from overtopping existing bulkheads, seawalls, dunes, or in any way encroaching landward of such structures unless indicated or specified otherwise. The Contractor shall include in his Work Plan to be submitted to the Contracting Officer for approval the details for preventing beach fill material during pipeline placement from flowing westward of the construction easement lines as indicated and specified. Water shall not be permitted to flow westward of the beach fill segment and, to the maximum extent practical, shall not be permitted to pond on the upland side of the beach fill.

3.1.3 Method of Discharge to Temporarily Contain Material Prior to Spreading

The Contractor shall install a baffle plate, spreader pipes, pocket pipes, or other approved apparatus to the discharge end of the pipeline that precisely controls the placement of the beach fill material and increases the settlement rate of the material to the maximum extent practicable. Temporary longitudinal control dikes shall be constructed in a manner that requires the effluent water to travel a minimum distance of 200 feet, measured horizontally, prior to returning to the waters of the Atlantic Ocean. Such longitudinal dikes and outfall devices shall be used to prevent transverse gullying and erosion at the point of deposit and the subsequent loss of material directly into the ocean. Once the material has been deposited, the Contractor shall distribute and grade the material to the lines and elevations as indicated and specified.

3.1.4 Beach Fill Construction, Grading, and Final Acceptance of the Beach Fill Placement Area

The beach fill material shall be placed along the seawall, boardwalk, and other points down the beach front as indicated. The finished berm shall be constructed at elevation +10 feet MLW (NGVD) with varying widths as directed by the Contracting Officer for each respective beach fill segment. The remainder of the respective beach fill segment shall be constructed with a foreshore graded slope not steeper than 1 vertical on 20 horizontal from the +10 feet MLW (NGVD) elevation to the +3 feet MLW (NGVD) elevation. The final

graded beach fill segments shall be constructed to an acceptable tolerance of 0.5 foot above or 0.5 foot below the required berm elevation and specified grade. The Contractor shall ensure that there are no undrained areas or abrupt mounds within the completed segments. The Contractor is not required to perform grading in or seaward of the water line at mean low water. Final acceptance of each respective beach fill placement area shall include the removal of all dredge discharge pipeline and Contractor equipment, all markings and stakes placed by the Contractor for the control of his work, and clean-up of all trash and debris from all areas affected by the Contractor's operations. The Contractor shall take minutes of all on-site inspections, and all parties present shall sign the completed inspection conclusions. Copies of all minutes from inspections shall be included separate of the Daily Report of Operations.

3.1.5 Fill Under Structures

Void spaces under structures such as seawall (bulkhead) walkovers and boardwalk access areas shall be completely filled where they lie within the lines and grades established for the beach section.

3.1.6 Storm Drain Outfalls

Temporary maintenance of storm drain outfalls along the beach placement area and all associated costs shall be the responsibility of the Contractor. The Contractor shall maintain the outfalls free of debris and sand at all times in a manner as approved by the Contracting Officer. The Contractor shall determine the exact location of these and all storm drain pipes and shall take all precautions required to protect and ensure proper function of the pipes.

3.1.7 Improperly Placed Beach Fill Material

Any beach fill material placed outside the vertical or horizontal limits of the fill area will not be paid for and shall be regraded or removed as directed by the Contracting Officer at the Contractor's expense.

3.1.8 Pipeline on the Beach

The Contractor shall provide, as a part of his Work Plan for approval, drawings showing locations of temporary alignment routes of pipelines, placement of booster pumps if used in the work, and proposed location of temporary ramps over the pipeline for pedestrian and emergency vehicle access along the beach. The location of the pipeline shall be limited to the shortest alignment route from the pump out mooring facility to the respective beach fill area under construction. The Contractor shall construct a barrier as specified to keep the public at least 250 feet from the discharge end of the pipe in both directions up and down the beach, and no closer than 100 feet of the seawall, boardwalk, access ramps, structures, or dune line unless directed otherwise by the Contracting Officer. Warning signs shall be posted by the Contractor in conspicuous and strategic places along the pipeline alignment stating "DANGER - HIGH PRESSURE DISCHARGE FROM DREDGE". The signs shall be at least 2 feet square and their final placement location approved by the Contracting Officer. Any deviation from the approved plan will require approval in writing from the Contracting Officer.

3.1.8.1 Watches

During beach fill placement operations, the Contractor shall provide qualified personnel 24-hours per day at the discharge area. At all times during discharge of material on the beach, at least 2 persons shall be assigned on watch duty with whistles, flashlights, and two-way radio communication with the dredge whose sole responsibility is to keep the public out of the work area around the discharge pipeline. Work shall not be performed on the beach fill area unless the designated watch persons are on site.

3.1.9 Sand Dune and Existing Beach Berm Protection

The Contractor shall protect from damage all existing sand dunes and maintain in place any existing beach material that is above the required placement elevation for this contract. The Contractor shall not borrow material or grade material from these areas or disturb vegetation on dunes. The operation and movement of vehicles, equipment and personnel on, over, or across sand dunes is specifically prohibited except at

crossing points that have been approved by the Contracting Officer.

3.2 FIELD QUALITY CONTROL

The Contractor shall establish and maintain quality control for the beach fill placement work and all other operations in connection with the work in the field to assure compliance with contract requirements. The Contractor shall inspect for compliance with contract requirements and record the inspection of all operations including but not limited to the following:

- a. The fill material meets classification requirements and is placed within the beach segment to the lines, grade, and tolerances specified.
- b. Beach fill operations are confined within the limits of the designated work area.
- c. The dredge effluent does not flow landward of the fill section or other limits as specified and established by the Contracting Officer.
- d. Damage to the existing and newly constructed beach is held to the minimum from the Contractor's operations.
- e. Adequate control is provided to prevent unnecessary loss of material by seaward flow of pipeline effluent.
- f. The pipeline is periodically inspected for leakage as specified.
- g. All joints of pipe for discharge line are tight, sound, and in a safe condition.
- h. All equipment used in the work is approved and in satisfactory working condition.
- i. Checks to insure safe work practices around structures and the public is performed as specified.

j. Checks conducted for proper lines, grades, and elevations in finished fill area including proper grading and elimination of undrained pockets and abrupt humps.

k. Insure all equipment and construction materials have been removed from completed work segments.

All results of inspections shall be documented with narrative explanations and photographs as necessary to document the conditions of field quality. The results and supporting data shall be recorded and provided by the Contractor in the Daily Report of Operations.